



# IOWA ADMINISTRATIVE BULLETIN

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Pages 1333 to 1376

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## PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

**PLEASE NOTE:** *Italics* indicate new material added to existing rules; ~~strike through letters~~ indicate deleted material.

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**CITATION of Administrative Rules**

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

## Schedule for Rule Making 2005

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 31 '04	Jan. 19 '05	Feb. 8 '05	Feb. 23 '05	Feb. 25 '05	Mar. 16 '05	Apr. 20 '05	July 18 '05
Jan. 14 '05	Feb. 2	Feb. 22	Mar. 9	Mar. 11	Mar. 30	May 4	Aug. 1
Jan. 28	Feb. 16	Mar. 8	Mar. 23	Mar. 25	Apr. 13	May 18	Aug. 15
Feb. 11	Mar. 2	Mar. 22	Apr. 6	Apr. 8	Apr. 27	June 1	Aug. 29
Feb. 25	Mar. 16	Apr. 5	Apr. 20	Apr. 22	May 11	June 15	Sept. 12
Mar. 11	Mar. 30	Apr. 19	May 4	May 6	May 25	June 29	Sept. 26
Mar. 25	Apr. 13	May 3	May 18	***May 18***	June 8	July 13	Oct. 10
Apr. 8	Apr. 27	May 17	June 1	June 3	June 22	July 27	Oct. 24
Apr. 22	May 11	May 31	June 15	June 17	July 6	Aug. 10	Nov. 7
May 6	May 25	June 14	June 29	***June 29***	July 20	Aug. 24	Nov. 21
***May 18***	June 8	June 28	July 13	July 15	Aug. 3	Sept. 7	Dec. 5
June 3	June 22	July 12	July 27	July 29	Aug. 17	Sept. 21	Dec. 19
June 17	July 6	July 26	Aug. 10	Aug. 12	Aug. 31	Oct. 5	Jan. 2 '06
***June 29***	July 20	Aug. 9	Aug. 24	***Aug. 24***	Sept. 14	Oct. 19	Jan. 16 '06
July 15	Aug. 3	Aug. 23	Sept. 7	Sept. 9	Sept. 28	Nov. 2	Jan. 30 '06
July 29	Aug. 17	Sept. 6	Sept. 21	Sept. 23	Oct. 12	Nov. 16	Feb. 13 '06
Aug. 12	Aug. 31	Sept. 20	Oct. 5	Oct. 7	Oct. 26	Nov. 30	Feb. 27 '06
***Aug. 24***	Sept. 14	Oct. 4	Oct. 19	Oct. 21	Nov. 9	Dec. 14	Mar. 13 '06
Sept. 9	Sept. 28	Oct. 18	Nov. 2	Nov. 4	Nov. 23	Dec. 28	Mar. 27 '06
Sept. 23	Oct. 12	Nov. 1	Nov. 16	***Nov. 16***	Dec. 7	Jan. 11 '06	Apr. 10 '06
Oct. 7	Oct. 26	Nov. 15	Nov. 30	Dec. 2	Dec. 21	Jan. 25 '06	Apr. 24 '06
Oct. 21	Nov. 9	Nov. 29	Dec. 14	***Dec. 14***	Jan. 4 '06	Feb. 8 '06	May 8 '06
Nov. 4	Nov. 23	Dec. 13	Dec. 28	Dec. 30	Jan. 18 '06	Feb. 22 '06	May 22 '06
***Nov. 16***	Dec. 7	Dec. 27	Jan. 11 '06	Jan. 13 '06	Feb. 1 '06	Mar. 8 '06	June 5 '06
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***Dec. 14***	Jan. 4 '06	Jan. 24 '06	Feb. 8 '06	Feb. 10 '06	Mar. 1 '06	Apr. 5 '06	July 3 '06
Dec. 30	Jan. 18 '06	Feb. 7 '06	Feb. 22 '06	Feb. 24 '06	Mar. 15 '06	Apr. 19 '06	July 17 '06

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
23	Friday, April 22, 2005	May 11, 2005
24	Friday, May 6, 2005	May 25, 2005
25	Wednesday, May 18, 2005	June 8, 2005

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

\*\*\*Note change of filing deadline\*\*\*

## PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies  
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SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 2.0.0, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
<b>ADMINISTRATIVE SERVICES DEPARTMENT[11]</b>		
Leave, 63.4(13), 63.9 IAB 4/13/05 <b>ARC 4107B</b>	Conference Room 04, Level A-South Hoover State Office Bldg. Des Moines, Iowa	May 3, 2005 11 a.m.
<b>EDUCATION DEPARTMENT[281]</b>		
Sales of goods or services by department officials, 1.5 IAB 4/13/05 <b>ARC 4099B</b>	Second Floor South Conference Room Grimes State Office Bldg. Des Moines, Iowa	May 4, 2005 2 p.m.
Unsafe school choice option, 11.3(1) IAB 4/13/05 <b>ARC 4098B</b>	Conference Room 2 Southwest Grimes State Office Bldg. Des Moines, Iowa	May 11, 2005 2 p.m.
<b>ENVIRONMENTAL PROTECTION COMMISSION[567]</b>		
Air quality, 20.2, 21.2(3), amendments to ch 22, 23.1, 25.1(9) IAB 3/16/05 <b>ARC 4059B</b>	Conference Rooms Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	April 19, 2005 1 p.m.
<b>IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]</b>		
Contribution rates for sheriffs and deputy sheriffs, 4.6 IAB 3/30/05 <b>ARC 4074B</b>	7401 Register Dr. Des Moines, Iowa	April 19, 2005 9 a.m.
<b>LOTTERY AUTHORITY, IOWA[531]</b>		
Monitor vending machines, 14.13, 14.14 IAB 4/13/05 <b>ARC 4096B</b> (See also <b>ARC 4097B</b> herein)	2015 Grand Ave. Des Moines, Iowa	May 4, 2005 10 a.m. (If requested)
<b>NATURAL RESOURCE COMMISSION[571]</b>		
Removal of portable blinds from game management areas, 51.5(2) IAB 3/30/05 <b>ARC 4084B</b> ( <b>ICN Network</b> )	Contact (515)281-5918 or visit the department's Web site at <a href="http://www.iowadnr.com">www.iowadnr.com</a> for list of 12 ICN hearing locations.	April 19, 2005 7 p.m.
Season dates for waterfowl and coot hunting, 91.1, 91.3, 91.4(2) IAB 3/30/05 <b>ARC 4091B</b> ( <b>ICN Network</b> )	Contact (515)281-5918 or visit the department's Web site at <a href="http://www.iowadnr.com">www.iowadnr.com</a> for list of 12 ICN hearing locations.	April 19, 2005 7 p.m.
Tagging in bow and late muzzleloader seasons, 94.4 IAB 3/30/05 <b>ARC 4086B</b> ( <b>ICN Network</b> )	Contact (515)281-5918 or visit the department's Web site at <a href="http://www.iowadnr.com">www.iowadnr.com</a> for list of 12 ICN hearing locations.	April 19, 2005 7 p.m.
Wild turkey spring hunting, ch 98 IAB 3/30/05 <b>ARC 4090B</b> ( <b>ICN Network</b> )	Contact (515)281-5918 or visit the department's Web site at <a href="http://www.iowadnr.com">www.iowadnr.com</a> for list of 12 ICN hearing locations.	April 19, 2005 7 p.m.

**NATURAL RESOURCE COMMISSION[571] (Cont'd)**

Wild turkey fall hunting by residents, 99.2, 99.4(9), 99.5(1), 99.8(2), 99.10 IAB 3/30/05 <b>ARC 4087B</b> (ICN Network)	Contact (515)281-5918 or visit the department's Web site at <a href="http://www.iowadnr.com">www.iowadnr.com</a> for list of 12 ICN hearing locations.	April 19, 2005 7 p.m.
Deer hunting by residents, 106.1, 106.2, 106.5 to 106.8 IAB 3/30/05 <b>ARC 4088B</b> (ICN Network)	Contact (515)281-5918 or visit the department's Web site at <a href="http://www.iowadnr.com">www.iowadnr.com</a> for list of 12 ICN hearing locations.	April 19, 2005 7 p.m.
Muskrat season; continuous closed season for bobcat and gray (timber) wolf, 108.1(2), 108.6 IAB 3/30/05 <b>ARC 4089B</b> (ICN Network)	Contact (515)281-5918 or visit the department's Web site at <a href="http://www.iowadnr.com">www.iowadnr.com</a> for list of 12 ICN hearing locations.	April 19, 2005 7 p.m.

**NURSING BOARD[655]**

Licensure, 3.1, 3.4, 3.5, 3.7, 4.6, 4.11 IAB 4/13/05 <b>ARC 4106B</b>	Des Moines West Room Holiday Inn Downtown 1050 Sixth Ave. Des Moines, Iowa	June 1, 2005 6:30 p.m.
License renewal fee, 3.1 IAB 4/13/05 <b>ARC 4105B</b>	Des Moines West Room Holiday Inn Downtown 1050 Sixth Ave. Des Moines, Iowa	June 1, 2005 6:30 p.m.

**PROFESSIONAL LICENSURE DIVISION[645]**

Marital and family therapists and mental health counselors, amendments to chs 31, 32, 34 IAB 4/13/05 <b>ARC 4092B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 3, 2005 10 to 11 a.m.
Marital and family therapists and mental health counselors— licensure and discipline, amendments to ch 31; 33.2(31) IAB 4/13/05 <b>ARC 4093B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 3, 2005 10 to 11 a.m.
Dietitians, amendments to chs 81, 82, 84 IAB 3/30/05 <b>ARC 4072B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	April 19, 2005 10 to 11 a.m.
Dietitians—discipline, 83.2(31) IAB 3/30/05 <b>ARC 4073B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	April 19, 2005 10 to 11 a.m.
Funeral directors, amendments to chs 101, 102, 105 IAB 4/13/05 <b>ARC 4101B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 10, 2005 9:30 to 10:30 a.m.
Funeral directors—licensure and discipline, 101.2, 101.4, 101.5, 101.8, 103.3(13) IAB 4/13/05 <b>ARC 4102B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 10, 2005 9:30 to 10:30 a.m.

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Athletic trainers, amendments to chs 351, 352, 354 IAB 4/13/05 <b>ARC 4094B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 3, 2005 9 to 10 a.m.
Athletic trainers—discipline, 353.2(32) IAB 4/13/05 <b>ARC 4095B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 3, 2005 9 to 10 a.m.

**PUBLIC SAFETY DEPARTMENT[661]**

Support and anchoring systems for manufactured homes, 16.626, 16.627, 16.629 IAB 4/13/05 <b>ARC 4115B</b> (See also <b>ARC 4116B</b> herein)	Fire Marshal Division Conference Rm. 401 SW Seventh St. Des Moines, Iowa	May 17, 2005 10 a.m.
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**REGENTS BOARD[681]**

Uniform rules of professional conduct; hearing examiners appointed by university presidents, 9.1 to 9.3 IAB 4/13/05 <b>ARC 4110B</b> (ICN Network)	N147 Lagomarcino Hall Corner of Knoll Rd. and Pammel Dr. Iowa State University Ames, Iowa	May 6, 2005 2 to 4 p.m.
	130 Schindler Corner of Hudson Rd. and 23rd St. University of Northern Iowa Cedar Falls, Iowa	May 6, 2005 2 to 4 p.m.
	107 North Hall End of N. Madison St. University of Iowa Iowa City, Iowa	May 6, 2005 2 to 4 p.m.

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Quality of service reporting by eligible telecommunications carriers, 39.3(1), 39.5 IAB 3/16/05 <b>ARC 4064B</b>	Hearing Room 350 Maple St. Des Moines, Iowa	May 11, 2005 9 a.m.



Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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## ARC 4107B

ADMINISTRATIVE SERVICES  
DEPARTMENT[11]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 8A.104, the Administrative Services Department hereby gives Notice of Intended Action to amend Chapter 63, “Leave,” Iowa Administrative Code.

An amendment is proposed to correct the rule on use of Family and Medical Leave Act (FMLA) leave when the employee also receives workers’ compensation benefits. Leave designated as FMLA leave shall run concurrently with workers’ compensation leave when the workers’ compensation absence is one that meets the FMLA criteria, whether or not the employee chooses to supplement workers’ compensation payments with paid leave. This change is consistent with 29 Code of Federal Regulations Part 825.

A second amendment is proposed to comply with 20 Code of Federal Regulations Part 1002, as amended by the Veterans Benefits Improvement Act of 2004 (VBIA). The 18-month period of continuation of employer-sponsored health care coverage provided under COBRA is changed to 24 months for employees who leave their jobs to perform military service. Interim final regulations were published in the Federal Register, Vol. 70, No. 46, dated March 10, 2005. This provision of the VBIA was effective for individuals electing COBRA coverage on or after December 10, 2004.

A third amendment clarifies the military leave rule, 63.9(8A). When determining a veteran’s eligibility for FMLA leave, the time of military service is included with the number of hours worked in state employment to determine if the veteran has worked 1250 hours in the past 12 months. This clarification is based on the federal Uniformed Services Employment and Reemployment Rights Act of 1994.

There will be a public hearing on May 3, 2005, at 11 a.m. in the Administrative Services Conference Room 04, Hoover State Office Building, Level A-South, at which time all interested parties may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. Persons with special needs should contact the Department of Administrative Services prior to the hearing if accommodations are needed.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on May 3, 2005. Interested persons may submit written, oral or electronic comments by contacting Carol Stratemeyer, Rules Administrator, Department of Administrative Services, Hoover State Office Building, Level A-South, Des Moines, Iowa 50319-0104; telephone (515)281-6134; fax (515)281-6140; E-mail [Carol.Stratemeyer@iowa.gov](mailto:Carol.Stratemeyer@iowa.gov).

These amendments are intended to implement Iowa Code section 8A.413 and 20 CFR Part 1002 and 29 CFR Part 825.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)

281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 63.4(13) as follows:

**63.4(13)** FMLA leave ~~may run~~ runs concurrently with a workers’ compensation absence ~~when the workers’ compensation absence is one that meets the FMLA criteria.~~ However, if the employee is supplementing workers’ compensation, the period of supplementation cannot count against FMLA leave entitlement. The employer shall wait to designate a workers’ compensation absence as FMLA leave until all accrued paid leave is exhausted or the employee unequivocally elects not to supplement.

An employee can be offered “restricted light duty,” and, if such restricted duty is refused, it may result in the loss of workers’ compensation benefits. Under the FMLA, the appointing authority may offer restricted duty; however, if the employee refuses, the employee shall lose workers’ compensation benefits but is still protected by the FMLA.

Employees on workers’ compensation who are on FMLA leave concurrently and who are unable to return to work after the exhaustion of FMLA leave are subject to state workers’ compensation laws and will have no job restoration rights under the FMLA.

ITEM 2. Amend subrule 63.9(9) as follows:

**63.9(9)** An employee may maintain health and dental insurance coverage while on military leave for up to ~~18~~ 24 months. The employee is responsible for paying the employee’s share of the health and dental insurance premiums if the period of military service is less than 31 days. If beyond ~~31~~ 30 days, the employee shall be required to pay 102 percent of the full premium under the plan to maintain coverage. Upon reemployment, health and dental insurance coverage will become effective either on the first day of the month following the month the employee was reemployed or the first day of the month in which the employee was reemployed. Coverage under the plans will not have an exclusion or waiting period upon reemployment. An exclusion or waiting period may be imposed, however, in connection with any illness or injury determined by the Secretary of the U.S. Department of Veterans’ Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services.

ITEM 3. Amend subrule 63.9(10) as follows:

**63.9(10)** A person reemployed under this rule shall be treated as not having incurred a break in service with the employer by reason of such person’s period of service in the uniformed services.

a. *Retirement system.* No forfeiture of benefits already accrued will be permitted, and there will be no necessity to requalify for participation in a retirement system by reason of absence for military service. To the extent required by law, employers will be required to make, on behalf of returning service members, any contributions to ~~their~~ the members’ pensions that the employer would have made if the service member had not been absent for military service. Employees will have up to three times the period of service to make up missed contributions (not to exceed five years). The employer is required to make matching contributions only to the extent that the reemployed service member makes the required employee contributions. No interest or penalty will be charged on the employee or employer contribution, nor will the employee be credited with interest that would have been earned on such contributions.

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

*b. FMLA eligibility. In determining whether a veteran meets the FMLA eligibility requirement, the months employed and the hours that were actually worked for the state shall be combined with the months and hours that would have been worked but for the military service during the 12 months prior to the start of the leave requested.*

**ARC 4113B****CAPITAL INVESTMENT BOARD,  
IOWA[123]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 15E.63, the Iowa Capital Investment Board hereby gives Notice of Intended Action to amend Chapter 4, “Investment Tax Credits Relating to Investments in a Fund of Funds Organized by the Iowa Capital Investment Corporation,” Iowa Administrative Code.

These amendments are proposed pursuant to 2005 Iowa Acts, Senate File 114.

Item 1 amends rule 123—4.1(15E) to clarify that contingent tax credits are available to designated investors in the Iowa fund of funds.

Item 2 amends rule 123—4.2(15E) to include changes to definitions.

Item 3 amends rule 123—4.3(15E) to include changes regarding the report issued by the Iowa Capital Investment Corporation.

Item 4 amends rule 123—4.4(15E) to include changes regarding the allocation and issuance of tax credit certificates.

Item 5 amends rule 123—4.5(15E) to include changes regarding the procedures for the verification of tax credits.

Item 6 amends rule 123—4.6(15E) to include changes regarding the contractual nature of the tax credit certificate and the irrevocability of these tax credits.

Item 7 amends rule 123—4.7(15E) to include changes regarding the transfer of the tax credit certificates.

Item 8 amends rule 123—4.8(15E) to include changes regarding the cancellation of tax credits upon receipt of the scheduled rate of return by designated investors.

Item 9 amends rule 123—4.9(15E) to include changes regarding the time frame for replacing lost or mutilated tax credit certificates.

Item 10 amends rule 123—4.10(15E) to include changes regarding claiming the tax credits.

Item 11 rescinds rules 123—4.13(15E) through 123—4.16(15E), which are now obsolete due to the anticipated structure of the Iowa fund of funds.

Item 12 amends the implementation clause for 123—Chapter 4.

These amendments are proposed by the Department of Revenue on behalf of the Iowa Capital Investment Board pursuant to an Administrative Services Agreement between the Department and the Board.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any.

The Board has determined that these proposed amendments may have an impact on small business. The Board has considered the factors listed in Iowa Code section 17A.4A. The Board will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than May 16, 2005, to the Iowa Capital Investment Board, in care of the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before May 3, 2005. Such written comments should be directed to the Iowa Capital Investment Board, in care of the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Board, in care of the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by May 16, 2005.

These amendments were Adopted and Filed Emergency and are published herein as **ARC 4114B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code chapter 15E as amended by 2005 Iowa Acts, Senate File 114.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

**ARC 4099B****EDUCATION DEPARTMENT[281]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 1, “Organization and Operation,” Iowa Administrative Code.

The proposed amendment is intended to implement Iowa Code section 68B.4 [2004 Iowa Acts, chapter 1091, section 5]. No waiver provision is included because the State Board of Education has adopted agencywide waiver rules.

Any interested person may submit oral or written suggestions or comments on or before May 4, 2005, by addressing

## EDUCATION DEPARTMENT[281](cont'd)

them to Carol J. Greta, Legal Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-5295; or E-mail [carol.greta@iowa.gov](mailto:carol.greta@iowa.gov).

There will be a public hearing on May 4, 2005, at 2 p.m. in the Second Floor South Conference Room, Grimes State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any person interested in attending the public hearing who has special needs should contact the Department of Education by April 29, 2005.

This amendment is intended to implement 2004 Iowa Acts, chapter 1091.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend 281—Chapter 1 by adding the following **new** rule:

**281—1.5(68B,256) Department of education officials.** The department of education is a regulatory agency. Accordingly, department officials are prohibited by Iowa Code section 68B.4 from selling goods or services to individuals and entities regulated by the department. Exceptions to this prohibition are governed by rules 351—6.10(68B) and 351—6.11(68B). "Officials" of the department of education shall include all employees of the department and all members of the state board of education.

**ARC 4098B****EDUCATION DEPARTMENT[281]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 11, "Unsafe School Choice Option," Iowa Administrative Code.

These rules are a federal requirement. A recent federal audit disclosed some confusion among schools as to data the Department collects on "weapons" violations. The state gun-free school law uses the same definition of "weapon" as the federal gun-free school law. However, the Department collects data on violations of the broader definition of weapons in Iowa Code section 702.7. By deleting the reference to the state gun-free school law, the confusion is removed.

A public hearing will be held on May 11, 2005, at 2 p.m. in Conference Room 2 Southwest, Grimes State Office Building, Des Moines, Iowa.

Comments may also be sent through May 11, 2005, to Carol J. Greta, Legal Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319; telephone (515)281-8661; or E-mailed to [carol.greta@iowa.gov](mailto:carol.greta@iowa.gov). Any person who intends to attend the public hearing and has special requirements, such as hearing or mobility impair-

ments, should contact the Department of Education and advise of specific needs.

The proposed amendment does not contain a waiver provision because an agencywide provision is provided in 281—Chapter 4.

This amendment is intended to implement the federal No Child Left Behind Act of 2001, Section 9532 (Public Law 107-110) and Iowa Code section 280.21B.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule 11.3(1) as follows:

**11.3(1)** A persistently dangerous school is one that meets the following criteria for three consecutive school years:

a. The school has violence-related, long-term suspensions or expulsions for more than 1 percent of the student population. Long-term suspensions or expulsions are more than ten days in length and require the action of the local school board. For purposes of this subrule, a violence-related, long-term suspension or expulsion occurs as a result of physical injury or the threat of physical injury to a student while the student is in the school building or on the grounds of the attendance center during the hours of the regular school day or while the student is in attendance at school-sponsored activities that occur during the hours before or after the regular school day under one of the following:

(1) A forcible felony as defined in rule 281—11.2(PL107-110);

(2) Offenses, excluding simple misdemeanors, involving physical assault under Iowa Code chapter 708;

(3) Offenses, excluding simple misdemeanors, involving sexual assault under Iowa Code chapter 709;

(4) Extortion under Iowa Code section 711.4;

(5) Use of incendiary or explosive devices such as bombs under Iowa Code section 712.5;

(6) Criminal gang activity under Iowa Code section *chapter* 723A;

(7) Carrying or using a weapon under Iowa Code sections 724.3 and 724.4.

b. The school has two or more students expelled for violating the federal ~~or state~~ gun-free school laws.

c. The school has 1 percent of the enrolled student population or five students, whichever is greater, who exercised the individual student option defined in rule 281—11.4(PL107-110).

**ARC 4108B****HUMAN SERVICES  
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 235B.5(1), the Department of Human Services proposes to amend Chap-

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ter 176, "Dependent Adult Abuse," Iowa Administrative Code.

These amendments:

- Eliminate the requirement for completion of a "preliminary" report of a dependent adult abuse evaluation.
- Extend the time limit for completion of an evaluation report from 10 working days to 20 working days after the receipt of the allegation.
- Specify that the Central Abuse Registry may grant an extension of the time limit for no more than 30 working days upon showing of good cause.
- Limit the Registry to granting three extensions.

These amendments are proposed to eliminate unproductive paperwork and to give Department protective service staff a more reasonable time limit for completing abuse evaluations. More than ten working days are often needed to contact and to receive responses from other professionals, such as physicians or counselors. Consequently, the preliminary reports are of little value and requests for an extension of the time limit are frequently required. The current rules do not limit the length or number of extensions, so an extension effectively removes any time limit for completion of the report. Dependent adults, the staff, and the public will all benefit from more workable and specific time limits.

These amendments do not provide for waivers in specified situations because these changes benefit the persons affected.

Any interested person may make written comments on the proposed amendments on or before May 4, 2005. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code sections 235B.3 and 235B.5.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 176.6(5), introductory paragraph, as follows:

**176.6(5)** The department, upon completion of its evaluation, shall transmit a copy of its preliminary report, including actions taken or contemplated, to the registry within four regular working days after the department receives the adult abuse report, unless the registry grants an extension of time for good cause shown. If the preliminary report is not a complete report, a complete report shall be filed within ten 20 working days of the receipt of the abuse report, unless the registry grants an extension of time for good cause shown. *The registry may grant an extension for a maximum of 30 working days. No more than three extensions shall be granted.*

ITEM 2. Amend rule 441—176.7(235B) as follows:

**441—176.7(235B) Appropriate evaluation or assessment.**

**176.7(1)** After receipt of the report alleging dependent adult abuse, the field worker shall make a preliminary an evaluation or assessment to determine whether the information as reported, other known information, and any information gathered as a result of the worker's contact with collateral sources would tend to corroborate the alleged abuse.

**176.7(2)** When the information gathered in the preliminary evaluation or assessment tends to corroborate, or the

worker is uncertain as to whether it repudiates the allegations of the report, the worker shall immediately continue the evaluation or assessment by making a reasonable effort to ensure the safety of the adult. The worker and the worker's supervisor shall determine whether an immediate threat to the physical safety of the adult is believed to exist.

a. If an immediate threat to the physical safety of the adult is believed to exist, the field worker shall make every reasonable effort to examine the adult, as authorized by 176.6(3), within one hour after receipt of the report and shall take any lawful action necessary or advisable for the protection of the adult.

b. When physical safety of the adult is not endangered, the worker shall make every reasonable effort to examine the adult within 24 hours after receipt of the report.

**176.7(3)** In the event the information gathered in the preliminary evaluation or assessment fails to corroborate the allegation of adult abuse, the worker, with approval of the supervisor, may terminate the evaluation or assessment and submit the "four-day report" required by subrule 176.6(5).

ITEM 3. Amend **441—Chapter 176**, implementation clause, as follows:

These rules are intended to implement Iowa Code chapter 235B as amended by 2003 Iowa Acts, Senate File 416 and House File 558.

## ARC 4096B

## LOTTERY AUTHORITY, IOWA[531]

### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 99G.9(3), the Iowa Lottery Authority hereby proposes to amend Chapter 14, "Monitor Vending Machines," Iowa Administrative Code.

Chapter 14 is being amended as a result of comments that the Lottery has received regarding the launch of its monitor vending machines (MVMs). Specifically, the Lottery received a complaint of false and misleading advertising pertaining to MVMs installed at three convenience store locations in the Quad Cities. While the Lottery had the advertisements in question removed within hours of being informed of them, these amendments are necessary in order to ensure that other retailers or premises operators do not place any other false or misleading advertisements. The amendments not only specifically outlaw false and misleading advertising, but also establish specific penalties for MVM retailers and MVM premises operators that place such advertisements in violation of the rules.

Any interested party may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request must include all of the following: the name, address, and telephone number of the party making the comments or request; a reference to the specific proposed amendments that are the subjects of the comments or request; and the general content of a requested oral presentation.

## LOTTERY AUTHORITY, IOWA[531](cont'd)

All comments or requests should be addressed to the Iowa Lottery Rules Administrator and should either be mailed to 2015 Grand Avenue, Des Moines, Iowa 50312, faxed to (515)281-7882, or E-mailed to [brandi.hoffmann@ilot.state.ia.us](mailto:brandi.hoffmann@ilot.state.ia.us). All comments or requests for oral presentations must be received by the Lottery Rules Administrator no later than May 3, 2005.

A public hearing to hear requested oral presentations is scheduled for May 4, 2005, at 10 a.m. at the Iowa Lottery headquarters. The meeting will be canceled without further notice if no oral presentations are requested.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 4097B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code chapter 99G.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

**ARC 4106B****NURSING BOARD[655]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby gives Notice of Intended Action to amend Chapter 3, "Licensure to Practice—Registered Nurse/Licensed Practical Nurse," and Chapter 4, "Discipline," Iowa Administrative Code.

These amendments provide for criminal background checks of examination and endorsement applicants and reactivating and disciplined licensees and provide a fee.

Any interested person may make written comments or suggestions on or before June 1, 2005. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685. Persons who wish to convey their views orally should contact the Executive Director at (515)281-3256, or in the Board office at 400 S.W. 8th Street, by appointment.

There will be a public hearing on June 1, 2005, at 6:30 p.m. in the Des Moines West Room, Holiday Inn Downtown, 1050 6th Avenue, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement the Volunteers for Children Act, Title 42 United States Code Section 5119C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **655—3.1(17A,147,152,272C)**, definition of "fees," numbered paragraphs "1" to "3" and "7," as follows:

1. Application for original ~~licensure~~ *license* based on the registered nurse examination, \$93 (*plus the fee for evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI)*).

2. Application for original ~~licensure~~ *license* based on the practical nurse examination, \$93 (*plus the fee for evaluation of the fingerprint packet and the criminal history background checks by the DCI and the FBI*).

3. Application for registered nurse/licensed practical nurse ~~licensure~~ *license* by endorsement, \$119 (*plus the fee for evaluation of the fingerprint packet and the criminal history background checks by the DCI and the FBI*).

7. For reactivation of a license to practice as a registered nurse/licensed practical nurse, \$175 for a license lasting more than 24 months up to 36 months (*plus the fee for evaluation of the fingerprint packet and the criminal history background checks by the DCI and the FBI*).

ITEM 2. Amend rule **655—3.1(17A,147,152,272C)**, definition of "fees," by adding the following **new** numbered paragraph "15":

15. Fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks, \$50. The fee shall be considered a repayment receipt as defined in Iowa Code section 8.2.

ITEM 3. Amend rule **655—3.1(17A,147,152,272C)** by adding the following **new** definition in alphabetical order:

"Licensee" means a person who has been issued a certificate to practice as a registered nurse or licensed practical nurse under the laws of this state.

ITEM 4. Amend rule **655—3.1(17A,147,152,272C)**, definition of "repayment receipts," as follows:

"Repayment receipts" means those moneys collected by a department or establishment that supplement an appropriation made by the legislature. Repayment receipts, as defined in Iowa Code section 8.2, apply to the definition of "fees," paragraphs "5," "6," "9," "12," ~~"13,"~~ "14," and "15" of this rule.

ITEM 5. Amend subparagraph **3.4(3)"a"(2)** as follows:

(2) Determine eligibility of each applicant upon receipt of an application, ~~fee fees~~, official nursing transcript and notification of NCLEX® registration.

ITEM 6. Amend subparagraph **3.4(3)"b"(1)** as follows:

(1) ~~Complete~~ *Submit a completed* application for ~~licensure~~ *license* by examination.

ITEM 7. Amend paragraph **3.4(3)"b"** by adding the following **new** subparagraph (2) and renumbering current subparagraphs (2) to (7) as (3) to (8):

(2) Submit two completed sets of the fingerprint packet to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

ITEM 8. Amend renumbered subparagraph **3.4(3)"b"(3)** as follows:

(3) Submit fee for application for ~~licensure~~ *license* by examination *plus the fee for evaluation of the fingerprint packet*

## NURSING BOARD[655](cont'd)

and the criminal history background checks as identified in the definition of "fees" in rule 3.1(17A,147,152,272C). All fees are nonrefundable.

ITEM 9. Amend renumbered subparagraph 3.4(3)"b"(8) as follows:

(8) Complete NCLEX® registration within 12 months of board receipt of the application for licensure license, fingerprint packet and fee fees. The board reserves the right to destroy documents after 12 months.

ITEM 10. Amend subparagraph 3.4(4)"a"(2) by adding the following new numbered paragraph "2" and renumbering current paragraphs "2" to "8" as "3" to "9":

2. Two completed sets of the fingerprint packet to facilitate a national criminal history background check.

ITEM 11. Amend renumbered paragraph 3.4(4)"a"(2)"3" as follows:

3. Application fee for licensure license by examination plus the fee for evaluation of the fingerprint packet and the criminal history background checks as identified in the definition of "fees" in rule 3.1(17A,147,152,272C). All fees are nonrefundable.

ITEM 12. Amend subparagraphs 3.4(4)"b"(1), (2) and (11) as follows:

(1) ~~Complete~~ Submit completed application for licensure license by examination, including two sets of the completed fingerprint packet.

(2) Submit fee for application for licensure license by examination plus the fee for evaluation of the fingerprint packet and the criminal history background checks as identified in the definition of "fees" in rule 3.1(17A,147,152,272C). All fees are nonrefundable.

(11) Complete NCLEX® registration within 12 months of board receipt of the application for licensure license, fingerprint packet and fee fees. The board reserves the right to destroy documents after 12 months.

ITEM 13. Amend paragraph 3.4(6)"c" as follows:

c. An applicant who fails the NCLEX® and reapplies for licensure license by examination shall be required to complete application for licensure license by examination, submit the fee for application by examination, complete the NCLEX® registration and submit a registration fee to the national test service. Two sets of the completed fingerprint packet, plus the fee identified in the definition of "fees" in rule 3.1(17A,147,152,272C), are required if 12 months have passed since the previous criminal history background check.

ITEM 14. Amend subrule 3.4(7) as follows:

3.4(7) Certificate of licensure license by examination. Upon completion of the relevant qualifications for licensure license by examination defined in these rules, the board shall issue a certificate of licensure license by examination and a current license to practice as a registered nurse/licensed practical nurse. The board staff may issue a certificate of license pending receipt of a report on the applicant from the DCI/FBI.

ITEM 15. Amend subparagraph 3.5(2)"a"(2) as follows:

(2) Determine eligibility of each applicant upon receipt of an application, fee fees, official nursing transcript, and verification of licensure license submitted by state of original licensure license or the National Council of State Boards of Nursing, Inc.

ITEM 16. Amend subparagraph 3.5(2)"b"(1) as follows:

(1) Submit a completed board application form for license by endorsement.

ITEM 17. Amend paragraph 3.5(2)"b" by adding the following new subparagraph (2) and renumbering current subparagraphs (2) to (6) as (3) to (7):

(2) Submit two sets of the fingerprint packet to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

ITEM 18. Amend renumbered subparagraph 3.5(2)"b"(3) as follows:

(3) Submit the fee for license by endorsement fee, made payable to the Iowa Board of Nursing plus the fee for evaluation of the fingerprint packet and the criminal history background checks as outlined identified in the definition of "fees" in rule 3.1(17A,147,152,272C). All fees are nonrefundable.

ITEM 19. Amend subrule 3.5(3), introductory paragraph, as follows:

3.5(3) Temporary license. A temporary license shall be issued to an applicant who is licensed in another state if the applicant meets the qualifications for licensure a license as outlined in subrule 3.3(1). The board application form and endorsement fee plus the fee for evaluation of the fingerprint packet and the criminal history background checks as outlined identified in the definition of "fees" in rule 3.1(17A,147,152,272C), and verification of licensure license form and two sets of the fingerprint packet to facilitate a national criminal history background check shall be on file in the office of the board prior to the issuance of the temporary license.

ITEM 20. Amend subrule 3.5(4) as follows:

3.5(4) Certificate of licensure license by endorsement. Upon completion of the endorsement procedures defined in these rules, the board shall issue a certificate of licensure license by endorsement and a current license to practice as a registered nurse/licensed practical nurse. The board staff may issue a certificate of license pending receipt of a report on the applicant from the DCI/FBI.

ITEM 21. Amend subparagraph 3.7(5)"d"(1) as follows:

(1) The licensee shall be provided an application, a continuing education report form, fingerprint packet and statement of the fee fees. The reactivation fee and criminal history background check fee is are specified in the definition of "fees" in rule 3.1(17A,147,152,272C).

ITEM 22. Amend subparagraph 3.7(5)"d"(3) as follows:

(3) Upon receipt of the completed reactivation application, required continuing education materials, the renewal fee two sets of the fingerprint packet to facilitate a national criminal history background check, fees for both the reactivation and the criminal history background check and verification that the primary state of residence is Iowa or a non-compact state, the licensee shall be issued a license for a 24- to 36-month period. At the time of the next renewal, the license will be placed on a three-year renewal cycle. Expiration shall be on the fifteenth day of the licensee's birth month. The board staff may issue a certificate of license pending receipt of a report on the applicant from the DCI/FBI.

ITEM 23. Add the following new paragraphs 4.6(3)"f" and "g":



## NURSING BOARD[655](cont'd)

f. Failing to submit an additional completed fingerprint packet as required and applicable fee, when a previous fingerprint submission has been determined to be unacceptable, within 30 days of a request made by board staff.

g. Failing to submit verification of compliance with continuing education requirements or exceptions for the period of time being audited.

ITEM 24. Amend rule 655—4.11(17A,147,152,272C), introductory paragraph, as follows:

**655—4.11(17A,147,152,272C) Application for reinstatement.** Any person whose license to practice nursing has been suspended, *or* revoked *or* voluntarily surrendered by order of the board *or has been voluntarily surrendered* may apply for reinstatement. A request for reinstatement must be accomplished in accordance with the terms and conditions specified in the board's order and filed in conformance with these rules. *The reinstatement request must be submitted with two sets of the fingerprint packet to facilitate a national criminal history background check, plus the fee identified in the definition of "fees" in 655—3.1(17A,147, 152,272C). All fees are nonrefundable.*

## ARC 4105B

## NURSING BOARD[655]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby gives Notice of Intended Action to amend Chapter 3, "License to Practice—Registered Nurse/Licensed Practical Nurse," Iowa Administrative Code.

This amendment increases the license renewal fee by \$21 (\$7 for each year covered by the license) for a total fee of \$120 for a three-year period.

Any interested person may make written comments or suggestions on or before June 1, 2005. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685. Persons who wish to convey their views orally should contact the Executive Director at (515)281-3256, or in the Board office at 400 S.W. 8th Street, by appointment.

There will be a public hearing on June 1, 2005, at 6:30 p.m. in the Des Moines West Room, Holiday Inn Downtown, 1050 6th Avenue, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code section 147.80.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule **655—3.1(17A,147,152,272C)**, definition of "fees," numbered paragraph "8," as follows:

8. For the renewal of a license to practice as a registered nurse/licensed practical nurse, \$99 *120* for a three-year period.

## ARC 4092B

PROFESSIONAL LICENSURE  
DIVISION[645]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science Examiners hereby gives Notice of Intended Action to amend Chapter 31, "Licensure of Marital and Family Therapists and Mental Health Counselors," Chapter 32, "Continuing Education for Marital and Family Therapists and Mental Health Counselors," and Chapter 34, "Fees," Iowa Administrative Code.

These proposed amendments define licensure status as active or inactive, define the process for license reactivation and reinstatement, change from pre- and post-continuing education audits prior to licensure to post-continuing education audits following licensure, add the grounds for disciplinary action, and establish the fee for reactivation.

Any interested person may make written comments on the proposed amendments no later than May 3, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on May 3, 2005, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 154D and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **645—31.1(154D)** as follows:

Amend the following definition:

"Licensure by endorsement" means the issuance of an Iowa license to practice mental health counseling or marital and family therapy to an applicant who is ~~currently~~ *or has been* licensed in another state.

Rescind the definition of "lapsed license."

Adopt the following **new** definitions in alphabetical order:

"Active license" means a license that is current and has not expired.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

"Grace period" means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"Reactivate" or "reactivation" means the process as outlined in rule 31.16(17A,147,272C) by which an inactive license is restored to active status.

"Reinstatement" means the process as outlined in 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

ITEM 2. Amend rule **645—31.8(154D)** by rescinding numbered paragraph "6" and adopting in lieu thereof the following **new** numbered paragraph "6":

6. Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- Licensee's name;
- Date of initial licensure;
- Current licensure status; and
- Any disciplinary actions taken against the license.

ITEM 3. Rescind subrule 31.10(1) and adopt in lieu thereof the following **new** subrule:

**31.10(1)** The biennial license renewal period for a license to practice marital and family therapy or mental health counseling shall begin on October 1 of an even-numbered year and end on September 30 of the next even-numbered year. The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.

ITEM 4. Rescind subrule 31.10(3) and adopt in lieu thereof the following **new** subrule:

**31.10(3)** A licensee seeking renewal shall:

- a. Meet the continuing education requirements of rule 645—32.2(272C) and the mandatory reporting requirements of subrule 31.10(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and
- b. Submit the completed renewal application and renewal fee before the license expiration date.

ITEM 5. Rescind subrule 31.10(5) and adopt in lieu thereof the following **new** subrule:

**31.10(5)** Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

ITEM 6. Amend subrule 31.10(7) as follows:

**31.10(7)** Late renewal. The license shall become late when the license has not been renewed by the expiration date

on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 34.1(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within ~~one month following the expiration date on the wallet card~~ *the grace period*.

ITEM 7. Adopt **new** subrule 31.10(8) as follows:

**31.10(8)** Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice mental health counseling or marital and family therapy in Iowa until the license is reactivated. A licensee who practices mental health counseling or marital and family therapy in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

ITEM 8. Rescind and reserve rules **645—31.11(272C)** and **645—31.12(272C)**.

ITEM 9. Rescind rule 645—31.15(17A,147,272C) and insert in lieu thereof the following **new** rule:

**645—31.15(17A,147,272C) License denial.**

**31.15(1)** When the board denies an applicant licensure, the board shall notify the applicant of the denial in writing by certified mail, return receipt requested, or in the manner of service of an original notice, and shall cite the reasons for which the application was denied.

**31.15(2)** An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a written notice of appeal and request for hearing upon the board by certified mail, return receipt requested, not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing shall specifically describe the facts to be contested and determined at the hearing.

**31.15(3)** If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hearing pursuant to this rule, the hearing and subsequent procedures shall be held pursuant to the process outlined in Iowa Code chapters 17A and 272C and 645—Chapter 11.

ITEM 10. Adopt the following **new** rules:

**645—31.16(17A,147,272C) License reactivation.** To apply for reactivation of an inactive license, a licensee shall:

**31.16(1)** Submit a reactivation application on a form provided by the board.

**31.16(2)** Pay the reactivation fee that is due as specified in 645—Chapter 34.

**31.16(3)** Provide verification of current competence to practice mental health counseling or marital and family therapy by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

3. Current licensure status; and
4. Any disciplinary action taken against the license; and
- (2) Verification of completion of 40 hours of continuing education within two years of the application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

- (1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

- (2) Verification of completion of 80 hours of continuing education within two years of application for reactivation.

**645—31.17(17A,147,272C) License reinstatement.** A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 31.16(17A,147,272C) prior to practicing mental health counseling or marital and family therapy in this state.

ITEM 11. Amend rule **645—32.1(272C)** as follows:

Rescind the definitions of "administrator," "approved sponsor," and "lapsed license."

Amend the following definitions:

"Active license" means the license of a person who is acting, practicing, functioning, and working in compliance with license requirements is current and has not expired.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules, which has received advance approval by the board pursuant to these rules.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period or the selection of providers for verification of adherence to continuing education provider requirements during a specified time period.

"Hour of continuing education" means a clock hour at least 50 minutes spent by a licensee in actual attendance at and completion of approved continuing education activity.

"Inactive license" means the license of a person who is not in practice in the state of Iowa, a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

ITEM 12. Amend subrules 32.2(3) and 32.2(4) as follows:

**32.2(3)** Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be approved by the board or otherwise meet the requirements herein pursuant to statutory provisions and the rules that implement them in accordance with these rules.

**32.2(4)** No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

ITEM 13. Amend rule 645—32.3(272C), catchwords, as follows:

**645—32.3(272C) Standards for approval.**

ITEM 14. Amend subrule 32.3(1), introductory paragraph and paragraph "c," as follows:

**32.3(1)** General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if it is determined by the board that the continuing education activity:

- c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. The application must be accompanied by a paper, manual or outline which substantively pertains to the subject matter of the program and reflects program schedule, goals and objectives. ~~The~~ At the time of audit, the board may request the qualifications of presenters.

ITEM 15. Amend subrule **32.3(1)**, paragraph "e," subparagraphs (2) and (3), as follows:

- (2) Number of program contact hours (One contact hour usually equals one hour of continuing education credit.); and

- (3) Official signature or verification by program sponsor Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

ITEM 16. Amend subrule **32.3(2)**, paragraph "a," as follows:

- a. Attendance at board-approved sponsor workshops, conferences, symposiums and academic courses. Official transcripts indicating successful completion of academic courses which apply to the field of mental health counseling or marital and family therapy, as appropriate, will be necessary in order to receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

ITEM 17. Amend subrule **32.3(2)** by rescinding and reserving paragraph "b."

ITEM 18. Adopt new subrule 32.3(3) as follows:

**32.3(3)** Required specific criteria. Three hours of the 40 continuing education hours shall be in ethics.

ITEM 19. Rescind rule 645—32.4(272C) and adopt the following new rule in lieu thereof:

**645—32.4(154D,272C) Audit of continuing education report.** After each educational biennium, the board may audit licensees to review compliance with continuing education requirements.

**32.4(1)** The board may audit a percentage of its licensees and may, at its discretion, determine to audit a licensee. A licensee whose license renewal application is submitted during the grace period may be subject to a continuing education audit.

**32.4(2)** The licensee shall provide the following information to the board for auditing purposes:

- a. Date and location of course, course title, course description, course outline, course schedule, names and qualifications of instructors/speakers and method of presentation; or a program brochure which includes all the information required in this paragraph;

- b. Number of contact hours for program attended; and

- c. Individual certificate of completion issued to the licensee or evidence of successful completion of the course from the course sponsor.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**32.4(3)** For auditing purposes, all licensees must retain the information identified in 32.4(2) for two years after the biennium has ended.

**32.4(4)** Information identified in subrule 32.4(2) must be submitted within one month after the date of notification of the audit. Extension of time may be granted on an individual basis.

**32.4(5)** If the submitted materials are incomplete or unsatisfactory, the licensee may be given the opportunity to submit make-up credit to cover the deficit found through the audit if the board determines that the deficiency was the result of good-faith conduct on the part of the licensee. The deadline for receipt of the documentation for this make-up credit is 120 days from the date of mailing to the address of record at the board office.

**32.4(6)** Failure to notify the board of a current mailing address will not absolve the licensee from the audit requirement, and an audit must be completed before license renewal.

ITEM 20. Rescind rule 645—32.5(272C) and adopt the following **new** rule in lieu thereof:

**645—32.5(154D,272C) Automatic exemption.** A licensee shall be exempt from the continuing education requirement during the license biennium when that person:

1. Served honorably on active duty in the military service; or
2. Resided in another state or district having continuing education requirements for the profession and met all requirements of that state or district for practice therein; or
3. Was a government employee working in the licensee's specialty and assigned to duty outside the United States; or
4. Was absent from the state but engaged in active practice under circumstances which are approved by the board.

ITEM 21. Rescind rules 645—32.6(272C), 645—32.7(272C), and 645—32.8(272C) and adopt **new** rule 645—32.6(154D,272C) as follows:

**645—32.6(154D,272C) Grounds for disciplinary action.**

The board may take formal disciplinary action on the following grounds:

- 32.6(1)** Failure to cooperate with a board audit.
- 32.6(2)** Failure to meet the continuing education requirement for licensure.
- 32.6(3)** Falsification of information on the license renewal form.
- 32.6(4)** Falsification of continuing education information.

ITEM 22. Rescind rule 645—32.9(272C) and adopt the following **new** rule in lieu thereof:

**645—32.9(154D,272C) Continuing education exemption for disability or illness.**

A licensee who has had a physical or mental disability or illness during the license period may apply for an exemption. An exemption provides for an extension of time or exemption from some or all of the continuing education requirements. An applicant shall submit a completed application form approved by the board for an exemption. The application form is available upon request from the board office. The application requires the signature of a licensed health care professional who can attest to the existence of a disability or illness during the license period. If the application is from a licensee who is the primary caregiver for a relative who is ill or disabled and needs care from that primary caregiver, the physician shall verify the licensee's status as the primary caregiver. A licensee who applies for an exemption shall be notified of the decision regarding the application.

A licensee who obtains approval shall retain a copy of the exemption to be presented to the board upon request.

**32.9(1)** The board may grant an extension of time to fulfill the continuing education requirement.

**32.9(2)** The board may grant an exemption from the continuing education requirement for any period of time not to exceed two calendar years. If the physical or mental disability or illness for which an extension or exemption was granted continues beyond the period initially approved by the board, the licensee must reapply for a continuance of the extension or exemption.

**32.9(3)** The board may, as a condition of any extension or exemption granted, require the licensee to make up a portion of the continuing education requirement in the manner determined by the board.

ITEM 23. Rescind rules 645—32.10(272C) and 645—32.11(272C).

ITEM 24. Amend subrules 34.1(4) and 34.1(5) as follows:

**34.1(4)** ~~Reinstatement fee for a lapsed license or an inactive license is \$50~~ *Reactivation fee is \$150.*

**34.1(5)** ~~Duplicate or reissued license certificate or wallet card fee is \$10.~~

ITEM 25. Rescind and reserve subrule 34.1(6).

## ARC 4093B

PROFESSIONAL LICENSURE  
DIVISION[645]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science Examiners hereby gives Notice of Intended Action to amend Chapter 31, "Licensure of Marital and Family Therapists and Mental Health Counselors," and Chapter 33, "Discipline for Marital and Family Therapists and Mental Health Counselors," Iowa Administrative Code.

These amendments propose new rule 645—31.18(154D), which defines services subject to regulation, delete from subrule 31.2(3) a reference to the form in which a fee is to be paid, add individuals to the list of groups for which practitioners may receive credit for supervision hours, substitute an acronym for the complete name of the organization referenced in subrule 31.3(1), and add new subrule 33.2(31), which provides the Board the ability to discipline a licensee for breach of an agreement or contract with the Impaired Practitioner Review Committee.

Any interested person may make written comments on the proposed amendments no later than May 3, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on May 3, 2005, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 147, 154D and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 31.2(3) as follows:

**31.2(3)** Each application shall be accompanied by the appropriate fees payable by check or money order to the Board of Behavioral Science Examiners. The fees are nonrefundable.

ITEM 2. Amend subrule **31.2(8)**, paragraph "b," as follows:

b. Maintained upon written request of the ~~candidate applicant~~. The ~~candidate~~ *applicant* is responsible for requesting that the file be maintained.

ITEM 3. Amend subrule **31.3(1)**, paragraph "b," as follows:

b. For a mental health counselor license shall take and pass the National Counselor Examination of the ~~National Board for Certified Counselors NBCC~~, or the National Clinical Mental Health Counselor Examination of the NBCC, or the Certified Rehabilitation Counselor Examination of the CRCC.

ITEM 4. Amend subrule **31.5(1)**, paragraph "c," as follows:

c. Include successful completion of at least 200 hours of supervision concurrent with 1,000 hours of marital and family therapy conducted in face-to-face contact with couples, ~~and families, and individuals~~;

ITEM 5. Amend subrule **31.6(2)**, last unnumbered paragraph, as follows:

If the applicant has taught a graduate-level course as outlined above at a college or university accredited by an agency recognized by the United States Department of Education or the Council on Professional Accreditation, that course ~~will~~ *may* be credited toward the course requirement.

ITEM 6. Rescind subrule **31.7(3)**.

ITEM 7. Adopt the following new rule:

**645—31.18(154D) Marital and family therapy and mental health counselor services subject to regulation.** Marital and family therapy and mental health counselor services provided to an individual in this state through telephonic, electronic or other means, regardless of the location of the marital and family therapy and mental health counselor, shall constitute the practice of marital and family therapy and mental health counseling and shall be subject to regulation in Iowa.

ITEM 8. Adopt new subrule 33.2(31) as follows:

**33.2(31)** Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

## ARC 4101B

PROFESSIONAL LICENSURE  
DIVISION[645]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Mortuary Science Examiners hereby gives Notice of Intended Action to amend Chapter 101, "Licensure of Funeral Directors," Chapter 102, "Continuing Education for Funeral Directors," and Chapter 105, "Fees,"\* Iowa Administrative Code.

These proposed amendments define licensure status as active or inactive, define the process for license reactivation and reinstatement, change from pre- and post-continuing education audits prior to licensure to post-continuing education audits following licensure, add the grounds for disciplinary action, and establish the fee for reactivation.

Any interested person may make written comments on the proposed amendments no later than May 10, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on May 10, 2005, from 9:30 to 10:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 156 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **645—101.1(156)** as follows:

Amend the following definition:

"Licensure by endorsement" means the issuance of an Iowa license to practice mortuary science to an applicant who is ~~currently~~ licensed in another state.

Rescind the definition of "lapsed license."

Adopt the following new definitions in alphabetical order:

"Active license" means a license that is current and has not expired.

"Grace period" means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

\*Former Chapter 104 renumbered as Chapter 105 in **ARC 4100B** published herein.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"Reactivate" or "reactivation" means the process as outlined in rule 101.18(17A,147,272C) by which an inactive license is restored to active status.

"Reinstatement" means the process as outlined in 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

ITEM 2. Rescind subrule 101.8(10) and adopt the following **new** subrule in lieu thereof:

**101.8(10)** Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- a. Licensee's name;
- b. Date of initial licensure;
- c. Current licensure status; and
- d. Any disciplinary action taken against the license.

ITEM 3. Rescind subrule 101.10(1) and adopt the following **new** subrule in lieu thereof:

**101.10(1)** The biennial license renewal period for a license to practice funeral directing shall begin on the sixteenth day of the licensee's birth month and end on the fifteenth day of the licensee's birth month two years later. The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license. All licensees shall renew on a biennial basis.

ITEM 4. Amend subrule 101.10(2) as follows:

**101.10(2)** An individual who was issued an initial license within six months of the license renewal date will not be required to renew the license until the subsequent renewal date two years later. *Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The licensee will be required to complete a minimum of 24 hours of continuing education per biennium for each subsequent license renewal.*

ITEM 5. Rescind subrules 101.10(3) and 101.10(4) and adopt in lieu thereof the following **new** subrules:

**101.10(3)** A licensee seeking renewal shall:

- a. Meet the continuing education requirements of rule 645—102.2(272C). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and
- b. Submit the completed renewal application and renewal fee before the license expiration date.
- c. Persons licensed to practice funeral directing shall keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.

**101.10(4)** Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board

shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

ITEM 6. Amend subrule 101.10(6) as follows:

**101.10(6)** Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 105.1(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within 30 days following the expiration date on the wallet card the grace period.

ITEM 7. Adopt **new** subrule 101.10(7) as follows:

**101.10(7)** Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a funeral director in Iowa until the license is reactivated. A licensee who practices as a funeral director in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

ITEM 8. Rescind and reserve rules **645—101.12(147)** and **645—101.13(272C)**.

ITEM 9. Rescind rule 645—101.14(272C) and adopt in lieu thereof the following **new** rule:

**645—101.14(272C) Reactivation of a funeral establishment license or a cremation establishment license or both establishment licenses.**

**101.14(1)** If the renewal fee is received more than 30 days after the expiration of the license, the license is inactive. A licensee who allows the license to become inactive shall not engage in business in Iowa without first complying with all regulations governing reactivation as outlined in the board rules. A licensee who allows the license to become inactive must apply for reactivation of the license.

**101.14(2)** Reactivation of the inactive license may be granted by the board if the applicant:

- a. Submits a written application for reactivation of the funeral establishment or cremation establishment license, or both licenses, to the board;
- b. Pays the late fee for failure to renew;
- c. Pays the reactivation fee; and
- d. Pays the renewal fee(s).

ITEM 10. Rescind rule 645—101.15(272C) and adopt in lieu thereof the following **new** rule:

**645—101.15(17A,147,272C) License denial.**

**101.15(1)** When the board denies an applicant licensure, the board shall notify the applicant of the denial in writing by certified mail, return receipt requested, or in the manner of service of an original notice, and shall cite the reasons for which the application was denied.

**101.15(2)** An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a written notice of appeal and request for hearing upon the board by certified mail, return receipt requested, not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing shall specifically describe the facts to be contested and determined at the hearing.

**101.15(3)** If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hear-

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ing pursuant to this rule, the hearing and subsequent procedures shall be held pursuant to the process outlined in Iowa Code chapters 17A and 272C and 645—Chapter 11.

ITEM 11. Adopt the following **new** rules:

**645—101.18(17A,147,272C) License reactivation.** To apply for reactivation of an inactive license, a licensee shall:

**101.18(1)** Submit a reactivation application on a form provided by the board.

**101.18(2)** Pay the reactivation fee that is due as specified in 645—Chapter 105.

**101.18(3)** Provide verification of current competence to practice as a funeral director by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 24 hours of continuing education within two years of the application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 48 hours of continuing education within two years of application for reactivation.

**645—101.19(17A,147,272C) License reinstatement.** A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 101.18(17A,147,272C) prior to practicing as a funeral director in this state.

ITEM 12. Amend rule **645—102.1(272C)** as follows:

Rescind the definitions of "administrator," "approved sponsor," and "lapsed license."

Amend the following definitions:

"Active license" means the license of a person who is acting, practicing, functioning, and working in compliance with license requirements a license that is current and has not expired.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules, which has received advance approval by the board pursuant to these rules.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period or the selection of providers for verification of adherence to continuing education provider requirements during a specified time period.

"Hour of continuing education" means a clock hour at least 50 minutes spent by a licensee in actual attendance at and completion of an approved continuing education activity.

"Inactive license" means the license of a person who is not in practice in the state of Iowa a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

Adopt the following **new** definition:

"Independent study" means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in these rules and includes a posttest.

ITEM 13. Amend subrules 102.2(3) and 102.2(4) as follows:

**102.2(3)** Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must meet the requirements herein pursuant to statutory provisions and the rules that implement them be in accordance with these rules.

**102.2(4)** No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

ITEM 14. Amend rule 645—102.3(272C), catchwords, as follows:

**645—102.3(272C) Standards for approval.**

ITEM 15. Amend subrule 102.3(1), introductory paragraph and paragraph "c," as follows:

**102.3(1)** General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if it is determined by the board that the continuing education activity:

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. The application must be accompanied by a paper, manual or outline which substantively pertains to the subject matter of the program and reflects program schedule, goals and objectives. The At the time of audit, the board may request the qualifications of presenters.

ITEM 16. Amend subrule **102.3(1)**, paragraph "e," subparagraphs (2) and (3), as follows:

(2) Number of program contact hours (One contact hour equals one hour of continuing education credit.); and

(3) Official signature or verification by program sponsor Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

ITEM 17. Amend subrule **102.3(2)**, paragraph "a," subparagraph (2), as follows:

(2) Business management: accounting, funeral home and crematory management and merchandising, computer application, funeral directing, and small business management.

ITEM 18. Amend subrule **102.3(2)**, paragraphs "c" and "d," as follows:

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

c. Attendance at or participation in a program or course which is offered or sponsored by an ~~approved continuing education sponsor~~ *a state or national funeral association that meets the criteria in paragraph 102.3(2)“a.”*

d. ~~Self-study Independent study~~, including television viewing, Internet, video- or sound-recorded programs, or correspondence work, or by other similar means ~~as authorized by the board~~ *that meet the criteria in paragraph 102.3(2)“a.”* Self-study Independent study credits must be accompanied by a certificate from the sponsoring organization that indicates successful completion of the test.

ITEM 19. Rescind rule 645—102.4(272C) and adopt the following **new** rule in lieu thereof:

**645—102.4(156,272C) Audit of continuing education report.** After each educational biennium, the board may audit licensees to review compliance with continuing education requirements.

**102.4(1)** The board may audit a percentage of its licensees and may, at its discretion, determine to audit a licensee. A licensee whose license renewal application is submitted during the grace period may be subject to a continuing education audit.

**102.4(2)** The licensee shall provide the following information to the board for auditing purposes:

a. Date and location of course, course title, course description, course outline, course schedule, names and qualifications of instructors/speakers and method of presentation; or a program brochure which includes all the information required in this paragraph;

b. Number of contact hours for program attended; and

c. Individual certificate of completion issued to the licensee or evidence of successful completion of the course from the course sponsor.

**102.4(3)** For auditing purposes, all licensees must retain the information identified in subrule 102.4(2) for two years after the biennium has ended.

**102.4(4)** Information identified in subrule 102.4(2) must be submitted within one month after the date of notification of the audit. Extension of time may be granted on an individual basis.

**102.4(5)** If the submitted materials are incomplete or unsatisfactory, the licensee may be given the opportunity to submit make-up credit to cover the deficit found through the audit if the board determines that the deficiency was the result of good-faith conduct on the part of the licensee. The deadline for receipt of the documentation for this make-up credit is 120 days from the date of mailing to the address of record at the board office.

**102.4(6)** Failure to notify the board of a current mailing address will not absolve the licensee from the audit requirement, and an audit must be completed before license renewal.

ITEM 20. Rescind rule 645—102.5(272C) and adopt the following **new** rule in lieu thereof:

**645—102.5(156,272C) Automatic exemption.** A licensee shall be exempt from the continuing education requirement during the license biennium when that person:

1. Served honorably on active duty in the military service; or

2. Resided in another state or district having continuing education requirements for the profession and met all requirements of that state or district for practice therein; or

3. Was a government employee working in the licensee's specialty and assigned to duty outside the United States; or

4. Was absent from the state but engaged in active practice under circumstances which are approved by the board.

ITEM 21. Rescind rule 645—102.6(272C) and adopt the following **new** rule in lieu thereof:

**645—102.6(272C) Grounds for disciplinary action.** The board may take formal disciplinary action on the following grounds:

**102.6(1)** Failure to cooperate with a board audit.

**102.6(2)** Failure to meet the continuing education requirement for licensure.

**102.6(3)** Falsification of information on the license renewal form.

**102.6(4)** Falsification of continuing education information.

ITEM 22. Rescind and reserve rules **645—102.7(272C)** and **645—102.8(272C)**.

ITEM 23. Rescind rule 645—102.9(272C) and adopt the following **new** rule in lieu thereof:

**645—102.9(272C) Continuing education exemption for disability or illness.** A licensee who has had a physical or mental disability or illness during the license period may apply for an exemption. An exemption provides for an extension of time or exemption from some or all of the continuing education requirements. An applicant shall submit a completed application form approved by the board for an exemption. The application form is available upon request from the board office. The application requires the signature of a licensed health care professional who can attest to the existence of a disability or illness during the license period. If the application is from a licensee who is the primary caregiver to a relative who is ill or disabled and needs care from that primary caregiver, the physician shall verify status as the primary caregiver. A licensee who applies for an exemption shall be notified of the decision regarding the application. A licensee who obtains approval shall retain a copy of the exemption to be presented to the board upon request.

**102.9(1)** The board may grant an extension of time to fulfill the continuing education requirement.

**102.9(2)** The board may grant an exemption from the continuing education requirement for any period of time not to exceed two calendar years. If the physical or mental disability or illness for which an extension or exemption was granted continues beyond the period initially approved by the board, the licensee must reapply for a continuance of the extension or exemption.

**102.9(3)** The board may, as a condition of any extension or exemption granted, require the licensee to make up a portion of the continuing education requirement in the manner determined by the board.

ITEM 24. Rescind rules **645—102.10(272C)** and **645—102.11(272C)**.

ITEM 25. Amend subrules 105.1(4) and 105.1(5) as follows:

**105.1(4)** ~~Reinstatement fee for a lapsed license or an inactive license is \$50~~ *Reactivation fee is \$100.*

**105.1(5)** Duplicate or reissued license certificate *or wallet card* fee is \$10.

ITEM 26. Rescind and reserve subrule **105.1(6)**.



**ARC 4102B****PROFESSIONAL LICENSURE  
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Mortuary Science Examiners hereby gives Notice of Intended Action to amend Chapter 101, “Licensure of Funeral Directors,” and Chapter 103, “Disciplinary Proceedings,”\* Iowa Administrative Code.

Proposed amendments remove the payment mechanism in subrule 101.2(3); clarify examination, licensure by endorsement and internship requirements; and provide the Board the ability to discipline a licensee for breach of an agreement or contract with the Impaired Practitioner Review Committee.

Any interested person may make written comments on the proposed amendments no later than May 10, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on May 10, 2005, from 9:30 to 10:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 156 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 101.2(3) as follows:

**101.2(3)** Each application shall be accompanied by the appropriate fees payable by check or money order to the Board of Mortuary Science Examiners. The fees are nonrefundable.

ITEM 2. Amend subrules 101.4(1) and 101.4(2) as follows:

**101.4(1)** The board shall accept a certificate of examination issued by the International Conference of Funeral Service Examining Boards, Inc., indicating a passing score on the arts and sciences portion of the examination.

**101.4(2)** Applicants *An applicant* shall be required to pass an examination covering the Iowa law and rules for mortuary science prior to being licensed *registered as an intern* in Iowa. A 75 percent score shall be required for passing of this examination.

\*New Chapter 103 adopted in **ARC 4100B** published herein.

ITEM 3. Amend subrule **101.5(1)**, paragraph “a,” as follows:

a. The intern must serve a minimum of one year of internship in Iowa under the direct supervision of a board-certified preceptor. The beginning and ending dates of the internship shall be indicated on the internship certificate. The intern shall engage in the practice of mortuary science only during the time indicated on the internship certificate. The intern must be approved and licensed following a successful internship before the intern may practice mortuary science.

ITEM 4. Amend subrule 101.8(6) as follows:

**101.8(6)** ~~Successful passage of~~ *Successfully passes* the Iowa law and rules examination with a score of at least 75 percent *as identified in 101.4(12)*.

ITEM 5. Amend subrule 101.8(9) as follows:

**101.8(9)** ~~Holds an original license in good standing obtained upon examination in the state from which the endorsement was received. The examination shall have covered substantially the same subjects in which an examination is required in Iowa, showing that the applicant has attained a passing grade. Applicants licensed before 1980 are exempt from showing a passing grade on the national board examination. The applicant shall have met the educational requirements of the state of Iowa for a funeral director; and~~

ITEM 6. Adopt new subrule 103.3(13) as follows:

**103.3(13)** Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

**ARC 4094B****PROFESSIONAL LICENSURE  
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Athletic Training Examiners hereby gives Notice of Intended Action to amend Chapter 351, “Licensure of Athletic Trainers,” Chapter 352, “Continuing Education for Athletic Trainers,” and Chapter 354, “Fees,” Iowa Administrative Code.

These proposed amendments define licensure status as active or inactive, define the process for license reactivation and reinstatement, change from pre- and post-continuing education audits prior to licensure to post-continuing education audits following licensure, add the grounds for disciplinary action, and establish the fee for reactivation.

Any interested person may make written comments on the proposed amendments no later than May 3, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on May 3, 2005, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 152D and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **645—351.1(152D)** as follows:

Rescind the definition of “lapsed license” and add the following **new** definitions in alphabetical order:

“Active license” means a license that is current and has not expired.

“Grace period” means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

“Reactivate” or “reactivation” means the process as outlined in rule 351.15(17A,147,272C) by which an inactive license is restored to active status.

“Reinstatement” means the process as outlined in 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

ITEM 2. Amend rule **645—351.7(152D)** by rescinding numbered paragraph “5” and adopting in lieu thereof the following **new** numbered paragraph “5”:

5. Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- Licensee's name;
- Date of initial licensure;
- Current licensure status; and
- Any disciplinary actions taken against the license.

ITEM 3. Rescind subrule 351.9(1) and adopt in lieu thereof the following **new** subrule:

**351.9(1)** The biennial license renewal period for a license to practice athletic training shall begin on March 1 of each odd-numbered year and end on February 28 of the next odd-numbered year. The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.

ITEM 4. Rescind subrule 351.9(3) and adopt in lieu thereof the following **new** subrule:

**351.9(3)** A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—352.2(152D) and the mandatory reporting requirements of subrule 351.9(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

ITEM 5. Rescind subrule 351.9(5) and adopt in lieu thereof the following **new** subrule:

**351.9(5)** Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

ITEM 6. Amend subrule 351.9(7) as follows:

**351.9(7)** Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 354.1(3 4). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within 30 days following the expiration date on the wallet card the grace period.

ITEM 7. Adopt **new** subrule 351.9(8) as follows:

**351.9(8)** Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as an athletic trainer in Iowa until the license is reactivated. A licensee who practices as an athletic trainer in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

ITEM 8. Rescind and reserve rule **645—351.10(272C)**.

ITEM 9. Rescind and reserve rule **645—351.13(272C)**.

ITEM 10. Rescind rule 645—351.14(17A,147,272C) and adopt in lieu thereof the following **new** rule:

**645—351.14(17A,147,272C) License denial.**

**351.14(1)** When the board denies an applicant licensure, the board shall notify the applicant of the denial in writing by certified mail, return receipt requested, or in the manner of service of an original notice, and shall cite the reasons for which the application was denied.

**351.14(2)** An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a written notice of appeal and request for hearing upon the board by certified mail, return receipt requested, not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing shall specifically describe the facts to be contested and determined at the hearing.

**351.14(3)** If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hearing pursuant to this rule, the hearing and subsequent procedures shall be held pursuant to the process outlined in Iowa Code chapters 17A and 272C and 645—Chapter 11.

ITEM 11. Adopt the following **new** rules:

**645—351.15(17A,147,272C) License reactivation.** To apply for reactivation of an inactive license, a licensee shall:

**351.15(1)** Submit a reactivation application on a form provided by the board.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**351.15(2)** Pay the reactivation fee that is due as specified in 645—Chapter 354.

**351.15(3)** Provide verification of current competence to practice as an athletic trainer by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 50 hours of continuing education within two years of the application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 50 hours of continuing education within two years of application for reactivation; and

(3) Verification of successful completion of the national BOC examination for athletic training.

**645—351.16(17A,147,272C) License reinstatement.** A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 351.15(17A,147,272C) prior to practicing as an athletic trainer in this state.

ITEM 12. Amend rule **645—352.1(272C)** as follows:

Rescind the definitions of "administrator," "approved sponsor," and "lapsed license."

Amend the following definitions:

"Active license" means the license of a person who is acting, practicing, functioning, and working in compliance with license requirements *is current and has not expired*.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules, which has received advance approval by the board pursuant to these rules.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period ~~or the selection of providers for verification of adherence to continuing education provider requirements during a specified time period~~.

"Hour of continuing education" means a clock hour ~~at least 50 minutes~~ spent by a licensee in actual attendance at and completion of an approved continuing education activity.

"Inactive license" means ~~the license of a person who is not engaged in practice in the state of Iowa a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.~~

Adopt the following **new** definition in alphabetical order:

"Independent study" means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

ITEM 13. Amend subrules 352.2(1), 352.2(3) and 352.2(4) as follows:

**352.2(1)** The biennial continuing education compliance period shall extend for a two-year period beginning on March 1 of each odd-numbered year and ending on February 28 of the next odd-numbered year. Each biennium, each person who is licensed to practice as an athletic trainer in this state shall be required to complete a minimum of 50 hours of continuing education approved by the board. ~~For the 2000 renewal cycle, 62 hours of continuing education shall be completed by March 1, 2003. Continuing education credit earned from September 30, 2000, through March 1, 2001, may be used either for the 2000 renewal cycle or the following biennium. The licensee may use the continuing education credit hours earned only once. The same credit may not be used for both compliance periods. This condition applies for the renewal biennium of 2000 and the following renewal biennium. Continuing education hours will return to 50 hours each biennium at the end of this prorated compliance period.~~

**352.2(3)** Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be approved by the board or otherwise meet the requirements herein pursuant to statutory provisions and the rules that implement them *in accordance with these rules*.

**352.2(4)** No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal. *A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.*

ITEM 14. Amend rule 645—352.3(152D), catchwords, as follows:

**645—352.3(152D) Standards for approval.**

ITEM 15. Amend subrule 352.3(1), introductory paragraph and paragraph "c," as follows:

**352.3(1)** General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if it is determined by the board that the continuing education activity:

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. ~~The application must be accompanied by a paper, manual or outline which substantively pertains to the subject matter of the program and reflects program schedule, goals and objectives. The~~ *At the time of audit, the board may request the qualifications of presenters;*

ITEM 16. Amend subrule **352.3(1)**, paragraph "e," subparagraphs (2) and (3), as follows:

(2) Number of program contact hours ~~(One contact hour equals one hour of continuing education credit); and~~

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

(3) ~~Official signature or verification by program sponsor~~  
*Certificate of completion or evidence of successful completion of the course provided by the course sponsor.*

ITEM 17. Amend subrule 352.3(2) as follows:

**352.3(2)** Specific criteria. Continuing education hours of credit may be obtained by ~~completing the following:~~

- a. ~~Participating participating~~ in a course provided by a BOC-approved provider of continuing education; ~~or~~
- b. ~~Participating in continuing education activities of an approved sponsor.~~

ITEM 18. Rescind rule 645—352.4(152D) and adopt the following **new** rule 645—352.4(152D,272C) in lieu thereof:

**645—352.4(152D,272C) Audit of continuing education report.** After each educational biennium, the board may audit licensees to review compliance with continuing education requirements.

**352.4(1)** The board may audit a percentage of its licensees and may, at its discretion, determine to audit a licensee. A licensee whose license renewal application is submitted during the grace period may be subject to a continuing education audit.

**352.4(2)** The licensee shall provide the following information to the board for auditing purposes:

- a. Date and location of course, course title, course description, course outline, course schedule, names and qualifications of instructors/speakers and method of presentation; or a program brochure which includes all the information required in this paragraph;
- b. Number of contact hours for program attended; and
- c. Individual certificate of completion issued to the licensee or evidence of successful completion of the course from the course sponsor.

**352.4(3)** For auditing purposes, all licensees must retain the information identified in 352.4(2) for two years after the biennium has ended.

**352.4(4)** Information identified in 352.4(2) must be submitted within one month after the date of notification of the audit. Extension of time may be granted on an individual basis.

**352.4(5)** If the submitted materials are incomplete or unsatisfactory, the licensee may be given the opportunity to submit make-up credit to cover the deficit found through the audit if the board determines that the deficiency was the result of good-faith conduct on the part of the licensee. The deadline for receipt of the documentation for this make-up credit is 120 days from the date of mailing to the address of record at the board office.

**352.4(6)** Failure to notify the board of a current mailing address will not absolve the licensee from the audit requirement, and an audit must be completed before license renewal.

ITEM 19. Rescind rule 645—352.5(152D) and adopt the following **new** rule 645—352.5(152D,272C) in lieu thereof:

**645—352.5(152D,272C) Automatic exemption.** A licensee shall be exempt from the continuing education requirement during the license biennium when that person:

- 1. Served honorably on active duty in the military service; or
- 2. Resided in another state or district having continuing education requirements for the profession and met all requirements of that state or district for practice therein; or
- 3. Was a government employee working in the licensee's specialty and assigned to duty outside the United States; or

4. Was absent from the state but engaged in active practice under circumstances which are approved by the board.

ITEM 20. Rescind rule 645—352.6(152D) and adopt the following **new** rule in lieu thereof:

**645—352.6(272C) Grounds for disciplinary action.** The board may take formal disciplinary action on the following grounds:

**352.6(1)** Failure to cooperate with a board audit.

**352.6(2)** Failure to meet the continuing education requirement for licensure.

**352.6(3)** Falsification of information on the license renewal form.

**352.6(4)** Falsification of continuing education information.

ITEM 21. Rescind and reserve rules **645—352.7(152D,272C)** and **645—352.8(152D,272C)**.

ITEM 22. Rescind rule 645—352.9(272C) and adopt the following **new** rule 645—352.9(272C) in lieu thereof:

**645—352.9(272C) Continuing education exemption for disability or illness.** A licensee who has had a physical or mental disability or illness during the license period may apply for an exemption. An exemption provides for an extension of time or exemption from some or all of the continuing education requirements. An applicant shall submit a completed application form approved by the board for an exemption. The application form is available upon request from the board office. The application requires the signature of a licensed health care professional who can attest to the existence of a disability or illness during the license period. If the application is from a licensee who is the primary caregiver for a relative who is ill or disabled and needs care from that primary caregiver, the physician shall verify the licensee's status as the primary caregiver. A licensee who applies for an exemption shall be notified of the decision regarding the application. A licensee who obtains approval shall retain a copy of the exemption to be presented to the board upon request.

**352.9(1)** The board may grant an extension of time to fulfill the continuing education requirement.

**352.9(2)** The board may grant an exemption from the continuing education requirement for any period of time not to exceed two calendar years. If the physical or mental disability or illness for which an extension or exemption was granted continues beyond the period initially approved by the board, the licensee must reapply for a continuance of the extension or exemption.

**352.9(3)** The board may, as a condition of any extension or exemption granted, require the licensee to make up a portion of the continuing education requirement in the manner determined by the board.

ITEM 23. Rescind rules **645—352.10(152D,272C)** and **645—352.11(272C)**.

ITEM 24. Amend subrules 354.1(5) and 354.1(6) as follows:

**354.1(5)** ~~Reinstatement fee for a lapsed license or an inactive license is \$50~~ *Reactivation fee is \$100.*

**354.1(6)** Duplicate or reissued license certificate *or wallet card* fee is \$10.

ITEM 25. Rescind and reserve subrule **354.1(8)**.

**ARC 4095B****PROFESSIONAL LICENSURE  
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Athletic Training Examiners hereby gives Notice of Intended Action to amend Chapter 353, “Discipline for Athletic Trainers,” Iowa Administrative Code.

Proposed new subrule 353.2(32) provides the Board the ability to discipline a licensee for breach of an agreement or contract with the Impaired Practitioner Review Committee.

Any interested person may make written comments on the proposed amendment no later than May 3, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on May 3, 2005, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 147 and 152D.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Adopt **new** subrule 353.2(32) as follows:

**353.2(32)** Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

**ARC 4115B****PUBLIC SAFETY  
DEPARTMENT[661]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 103A.7, the Building Code Commissioner, with the approval of the Building Code Advisory Council, hereby gives Notice of Intended Action to amend Chapter 16, “State of Iowa Building Code,” Iowa Administrative Code.

While provisions of the State of Iowa Building Code generally apply to buildings owned by the State of Iowa and to buildings and facilities constructed in local jurisdictions which have adopted the State of Iowa Building Code, rules establishing standards for factory-built structures, including manufactured housing, apply statewide.

Among the requirements established for manufactured homes in the State of Iowa Building Code are standards for support and anchoring systems found in rule 661—16.626(103A) and approval procedures for these systems found in rule 661—16.629(103A) and requirements for approval of existing tie-down systems found in rule 661—16.627(103A).

It has recently become apparent that there is some confusion about the wording of rule 661—16.626(103A), especially in regard to the circumstances under which installation of a manufactured home may deviate from the manufacturer’s installation instructions or an alternative support and anchoring system designed by a licensed professional engineer. While an alternative system is outlined in the rule, this alternative is not acceptable except when a manufacturer’s installation instructions are unavailable. The amendments proposed herein are intended to make entirely clear the circumstances under which the alternative support and anchoring system outlined in rule 661—16.626(103A) may be used. The proposed amendments also delete a provision, intended to be available under very limited circumstances, which allows the use of a system in which pier foundations would not be required to extend below the frostline. The use of this provision may result in structurally unsound installations, so it is being eliminated.

Rule 661—16.627(103A) refers in several places to “the effective date of these rules.” This usage is no longer accepted, so this phrase is being replaced by the actual effective date of rule 661—16.627(103A), which was August 12, 1983.

If an installation adheres to the requirements of rule 661—16.626(103A), further approval by the Building Code Commissioner is not required. However, submission of support and anchoring system specifications is needed, so the approval procedures specified in rule 661—16.629(103A) are being replaced with requirements for submission of specifications and installation instructions for support and anchoring systems.

A public hearing regarding these amendments will be held on May 17, 2005, at 10 a.m. in the Fire Marshal Division Conference Room, 401 S.W. 7th Street, Des Moines, Iowa 50309. At the public hearing, persons may present their views concerning these amendments orally or in writing. Persons who wish to make oral presentations at the hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, 502 East 9th Street, Des Moines, Iowa 50319; or by telephone at (515)281-5524 at least one day prior to the hearing. Any interested persons may make oral or written comments concerning these proposed amendments to the Agency Rules Administrator by mail, telephone, or in person at the above address at least one day prior to the public hearing. Comments may also be submitted by electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us) at least one day prior to the public hearing.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 4116B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code section 103A.7.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be

PUBLIC SAFETY DEPARTMENT[661](cont'd)

available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

## ARC 4111B

### REGENTS BOARD[681]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 262.9(3), the Board of Regents hereby gives Notice of Intended Action to amend Chapter 4, "Traffic and Parking at Universities," Iowa Administrative Code.

These amendments will update the sanctions for parking violations at Iowa State University and add forging of permits to the list of prohibited offenses.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested person may make written comments or suggestions on or before Tuesday, May 3, 2005. Such written materials should be directed to Andrea Anania, Policy and Operations Analyst, Board of Regents, 11260 Aurora, Urbandale, Iowa 50322. Comments may also be sent by E-mail to [anania@iastate.edu](mailto:anania@iastate.edu) or submitted by fax to (515)281-6420.

These amendments are intended to implement Iowa Code chapter 262.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 4.30(5) as follows:

**4.30(5) Procedure.** Applications for parking privileges shall be submitted in the manner prescribed by the manager. No student shall apply for parking privileges for any vehicle owned or actually maintained by another student. The manager shall determine the eligibility and priority of each applicant for parking privileges within the classifications established in 4.30(1), 4.30(2) and 4.30(3) and shall make parking assignments. A parking permit will be issued to each applicant who is granted parking privileges, and the permit shall be displayed on the vehicle in the manner prescribed by the manager. Parking permits are not transferable. The unauthorized possession, use, alteration, *forging* or counterfeiting of a parking permit, or any portion thereof, is prohibited. Parking privileges will not be granted to a student and to an employee or visitor for the same vehicle, and a student parking permit and an employee or visitor parking permit shall not be displayed on the same vehicle. Temporary parking permits may be issued to accommodate special situations. The manager shall adopt a procedure to replace lost, stolen and destroyed parking permits and controlled access entry cards.

ITEM 2. Amend subrule 4.31(2) as follows:

**4.31(2) Sanction.** Reasonable monetary sanctions may be imposed for violation of these rules. The amount of the sanc-

tion approved by the board of regents, state of Iowa, is as follows:

<u>Offenses</u>	<u>Sanctions for Each Offense</u>
Altering, <i>forging</i> , or counterfeiting any parking permit (4.30(5))	\$40 \$80
Unauthorized possession and use of a parking permit (4.30(5))	\$40 \$80
Failure to comply with signs regulating campus traffic flow (4.27(262))	\$20 \$30
Driving on campus walks or lawns (4.27(6), 4.27(8))	\$20 \$30
Driving on closed streets (4.27(3))	\$20 \$30
Driving on bike paths (4.27(7))	\$20 \$30
Access to restricted areas by means other than established gate openings (4.29(5))	\$20 \$30
Moving or driving around a barricade (4.29(5))	\$20 \$30
Improper use of gate card (4.29(262))	\$10 \$20
Illegal parking (4.29(7))	\$12 \$15
Improper parking (4.29(7))	\$12 \$15
Overtime parking at meters (4.29(2))	\$5 \$7.50
Parking without an appropriate permit in a reserved lot or space (4.29(262))	\$15 \$25
Improper affixing or failure to display a permit (4.28(262))	\$5
Failure to purchase a parking receipt (4.29(2))	\$10 \$7.50
Improper parking in a space or stall designated for persons with disabilities (4.29(262), 4.30(4))	\$100
Failure to display a current bicycle registration (4.28(4))	\$5
Bicycle improperly parked (4.29(9))	\$5 \$7.50
Improper use of roller skates, roller blades or skateboard (4.27(9))	\$20 \$25
All other violations	\$12 \$15

Violations that continue for more than one hour may receive additional sanctions.

Sanctions may be assessed against the owner or operator of the vehicle involved in each violation or against any person in whose name the vehicle is registered or parking privileges have been granted and *may be* charged to the violator's university account. Sanctions may be added to student tuition bills or may be deducted from student deposits or from the salaries or wages of employees or from other funds in the possession of the university.

## ARC 4110B

### REGENTS BOARD[681]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 262.9(12) and 262.12, the Board of Regents hereby gives Notice of Intended Action to amend Chapter 9, "Policies, Practices and Procedures," Iowa Administrative Code.

## REGENTS BOARD[681](cont'd)

These amendments are intended to do the following: The amendments will assist Regent universities in educating students and employees on prohibited personal conduct and consequences related to participating in riots, unlawful assemblies, and failure to disperse at university-sponsored events. Recent studies show that there is an accelerating pattern of university-related riots in the United States. While rioting is already forbidden under Iowa Code chapter 723, entitled "Public Disorder," students and employees should specifically be made aware of their legal obligations at university-sponsored events. The amendments will also:

- Assist in preventing future collective disturbances;
- Put students and employees on notice that such behavior is unacceptable;
- Make students and employees aware of the consequences for such behavior;
- Apply a uniform rule for all regent universities;
- Include in the definition of "student" admitted but nonmatriculated students, students suspended for a fixed term, and students continuing their studies with the intent to return but who are not formally enrolled (as with many graduate students on leave) (9.1(1));
- Delete the language which makes suspended students and employees "visitors" since they would be treated as students or employees (9.1(1));
- Make clear that the universities have authority to adopt provisions supplemental to the uniform rules of personal conduct (9.1(1));
- Broaden provisions on physical abuse, damage to property, and possession of weapons and dangerous materials to include conduct occurring at or during university-authorized functions or events, and to include student conduct at such activities as band trips, athletic functions and other events away from the campus (9.1(2)"c," "d," and "f" to "i");
- Remove the provision that requires a hearing for new applicants or persons who have lost status as employees as there is no due process requirement for this. The proposed amendments retain the obligation to provide a hearing to those who have a right of reinstatement (such as those on a term suspension) (9.1(3)"b"); and
- Allow university presidents the option of appointing qualified hearing examiners if university resources are not adequate on a particular occasion (9.3(262)).

A waiver provision is not included. The Board has adopted a uniform waiver rule, which may be found at 681 IAC 19.18(17A).

Any interested person or persons may present their views either orally or in writing at the public hearing which will be held over the Iowa Communications Network (ICN) on Friday, May 6, 2005, from 2 to 4 p.m. at the following three locations:

1. Iowa State University: N147 Lagomarcino Hall, Corner of Knoll Road and Pammel Drive, Ames, Iowa.
2. University of Northern Iowa: 130 Schindler, Corner of Hudson Road and 23rd Street, Cedar Falls, Iowa.
3. University of Iowa: 107 North Hall, End of North Madison Street, Iowa City, Iowa.

Written comments may also be directed by May 6, 2005, to Susan Anderson, Board of Regents, State of Iowa, 11260 Aurora Avenue, Urbandale, Iowa 50322. Comments may also be made by May 6, 2005, through E-mail to [seander@iastate.edu](mailto:seander@iastate.edu) or by fax at (515)281-6420.

These amendments are intended to implement Iowa Code sections 262.9 and 262.12.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 681—9.1(262) as follows:

**681—9.1(262) Uniform rules of personal conduct.**

**9.1(1) Definitions.** For purposes of these rules, the following words shall have the meaning set forth unless the context requires otherwise.

"Admission" means admission, readmission, reentry, registration, and reregistration as a student to any educational program of the university.

"Board" means the state board of regents, state of Iowa.

"Campus" ~~includes means~~ all property owned or used by the university.

"Dismissal of a member of the faculty or staff" means termination of status as an employee without right of reemployment.

"Expulsion of a student" means termination of status as a student without right of readmission.

"Member of the faculty or staff" ~~includes means~~ all employees of the university.

"Person" means any student, member of the faculty or staff, or visitor.

"President" means the president (or acting president) of the university or any person or persons designated to act on the president's behalf for purposes of these rules.

"Student" means a person who is currently registered as a student at the university in an undergraduate, graduate or professional program on the campus, *and includes students who have been suspended for a fixed period of time, during that fixed period; admitted students prior to enrollment; and persons continuing to work on a program of studies with the intent of returning to the university, even though not formally enrolled.*

"Suspension of a member of the faculty or staff" means that during a specified period of time, the member of the faculty or staff is not eligible to continue as an employee of the university, or to resume employment status or to be granted admission as a student. Subject to other rules and regulations of each institution concerning continued employment by the institution, a member of the faculty or staff who has been suspended for a specified period shall be reinstated by the university at the expiration of the suspension period provided that during the suspension period the member of the faculty or staff has not committed *other* acts of misconduct specified in 9.1(2) *or in the policies of the university.* ~~One A member of the faculty or staff~~ under such suspension whose reemployment is denied on the basis of alleged acts of misconduct committed during a suspension period shall have a right to a hearing on that issue as provided in 9.1(3).

"Suspension of a student" means that during a specified period of time, the student shall be denied admission to the university ~~or employment by it.~~ Subject to the rules and regulations of each institution concerning enrollment at the institution, a suspended student shall be reinstated to the university at the expiration of the suspension period provided that during the suspension period the student has not committed acts of misconduct specified in 9.1(2). A suspended student whose reinstatement is denied on the basis of alleged acts of misconduct committed during this suspension period shall have a right to a hearing on that issue, as provided in 9.1(3).

## REGENTS BOARD[681](cont'd)

"University" means an institution of higher learning under the jurisdiction of the board. When used in the plural, the word means all institutions of higher learning under the jurisdiction of the board.

"Visitor" means any person on the campus who is not a student or a member of the faculty or staff. ~~A suspended member of the faculty or staff, or a suspended student, who is on the campus during the period of such suspension shall be deemed a visitor.~~

**9.1(2)** Rules of personal conduct. *The acts of misconduct defined in this subrule apply at the universities governed by the board. The universities are authorized to adopt other definitions of misconduct in addition to those in this rule.* Any person, student, member of the faculty or staff, or visitor, who intentionally commits, attempts to commit, or incites or aids others in committing any of the following acts of misconduct shall be subject to disciplinary procedures by the university as hereinafter provided action:

a. Obstruction or disruption of teaching, research, administration, disciplinary procedures, or other university or university-authorized function or event.

b. Unauthorized occupation or use of or unauthorized entry into any university facility. However, any entry into, use of, or occupation of any university facility by a student or member of the faculty or staff, which does not violate any of the other rules of personal conduct set forth herein, shall be deemed unauthorized only if specifically prohibited, if that facility is closed at that time to general use or if the person fails to comply with proper notice to leave.

c. Physical abuse or the threat of physical abuse against any person on the campus or at ~~or during~~ any university-authorized function or event, or other conduct which threatens or endangers the health or safety of ~~any such person~~ others.

d. Theft of or damage to property of the university or of a person on the campus ~~or at or during any university-authorized function or event.~~

e. Interference with the right of access to university facilities or with any other lawful right of any person on the campus.

f. Setting a fire on the campus ~~or at or during any university-authorized function or event~~ without proper authority.

g. Use or possession on the campus ~~or at or during any university-authorized function or event~~ of firearms, ammunition, or other dangerous weapons, substances, or materials (except as expressly authorized by the university), or of bombs, explosives, or explosive or incendiary devices prohibited by law.

~~h. Conduct off campus which leads directly to a violation of any of paragraphs "a" to "g" of this subrule. Participation in a riot or unlawful assembly, or failure to disperse, as defined by state law, whether such acts occur on or off the campus, if such act or failure to act occurs:~~

~~(1) In the contiguous metropolitan area in which any university governed by the board is located; or~~

~~(2) During a function or event authorized or sponsored by the university or an organization recognized by or affiliated with the university.~~

~~i. Conduct off campus which leads directly to a violation of any of paragraphs "a" to "h" of this subrule.~~

**9.1(3)** Sanctions.

a. Any student or member of the faculty or staff who is found after appropriate hearing to have violated any of the rules of personal conduct set forth in 9.1(2) may be sanc-

tioned up to and including suspension, expulsion, or dismissal.

NOTE: "Appropriate hearing" as used throughout these rules means pursuant to existing hearing procedures in effect at the university for students and members of the faculty and staff.

If a suspension is ordered after the start of a semester or quarter, however, the time period of the suspension shall be deemed to run from the beginning of the semester or quarter rather than from the actual date of the order. A faculty or staff member who is suspended as a sanction under rule shall receive no salary during the period of suspension; provided, however, that payment shall be made for work done prior to the date of the suspension order.

b. A person who applies for admission reinstatement to or employment reemployment by the university (either for the first time, or after a term of suspension or dismissal) may be denied such admission reinstatement or employment reemployment if it is found that such person has committed any acts of misconduct specified in 9.1(2) ~~while a visitor on the campus or in the policies of the university.~~ A person denied admission reinstatement or employment reemployment under this section subrule shall have a right to an appropriate hearing ~~or to follow the grievance process of the university.~~

c. Any sanction imposed under 9.1(3)"a" and "b" shall have operative effect at all universities, and a person not eligible for admission to or employment by one university shall be barred similarly at the other universities.

**9.1(4)** Emergency power.

a. The president is authorized to declare a state of emergency to exist at the institution upon a determination that violent actions or disruptive activities at the university are of such a nature as:

(1) To present a clear and present danger to the orderly processes of the university or to persons or property on the campus, and

(2) To require extraordinary measures to:

1. Safeguard persons or property at such institution, or

2. Maintain educational or other legitimate institutional functions.

b. The state of emergency shall cease to exist automatically 48 hours after it is declared unless the president, after reviewing the situation, determines that it should be extended, such determination to be made under the standards established in 9.1(4)"a"(1) and 9.1(4)"a"(2). Each extension shall be for a maximum period of 48 hours with a new determination being made for each extension. The president may declare the state of emergency to be over before the 48-hour period has run.

c. As soon as feasible after declaring a state of emergency, the president shall notify the board of actions taken.

d. Upon a finding by the president as set forth in 9.1(4)"a," the president is authorized to take such action as may be necessary to eliminate or alleviate a clear and present danger to the orderly processes of the university and to safeguard persons or property at the university or to maintain educational or other legitimate university functions including barring a particular person or persons from the campus.

**9.1(5)** Sanctions under emergency power.

a. Any person who, after appropriate hearing, is found to have violated knowingly a presidential order issued as contemplated in 9.1(4) may be expelled or dismissed disciplined, up to and including expulsion or dismissal from the university.

b. Any person who, after appropriate hearing, is found to have violated during a state of emergency, knowing that a



## REGENTS BOARD[681](cont'd)

state of emergency has been declared, any of the regents' rules of personal conduct, set forth in 9.1(2) of this policy, may be ~~expelled or dismissed~~ *disciplined, up to and including expulsion or dismissal* from the university.

~~e.—Any person who, after appropriate hearing, is found to have violated knowingly a presidential order as contemplated in 9.1(4) and, knowing that a state of emergency had been declared, is found to have violated during the state of emergency any of the regents' rules of personal conduct, set forth in 9.1(2) of this policy, may be expelled or dismissed from the university.~~

d c. Any sanction imposed under this section *subrule* shall have operative effect at all universities, and a person not eligible for admission to or employment by one university shall be barred similarly at the other universities.

**9.1(6)** Constitutional rights. The foregoing rules shall be construed so as not to abridge any person's constitutional right of free expression of thought or opinion, including the traditional American right to assemble peaceably and to petition authorities.

ITEM 2. Amend rule 681—9.2(262) as follows:

**681—9.2(262) Transfers.** All transfer applicants from any institution of higher learning to a university governed by the board of regents are asked about their eligibility to return to the institution from which the applicant is transferring. If the applicants are not eligible to return, the following rules apply:

**9.2(1)** Transfers among regent institutions. Transcripts at all regent universities now include an appropriate notation if a student is ineligible for readmission or reenrollment. Admission is denied if the applicant currently is under disciplinary suspension or has been dismissed from one of the other regent universities for violation of the regents' rules of personal conduct and is not eligible to reenter. Further, if such transfer applicant is currently on probation for having violated the regents' rules of personal conduct at one university, the applicant, if admitted to another regents *regent* university, is admitted on probation.

**9.2(2)** Transfers from nonregent institutions. If the application for admission or the transcript from another institution shows that the applicant is not eligible to reenroll there, further inquiry will be made to determine the reason. Such inquiry may lead to admission, conditional admission, or denial of admission. Appeals from the decision will be referred to appropriate university channels.

**9.2(3)** Applications from "visitors." ~~Under the regents' rules of personal conduct, "visitors"~~ *"Visitors"* to the campus who are believed to have violated the rules *of personal conduct* and who later apply for admission *or employment* may be denied admission *or employment* because of their prior conduct, subject to review if the denial is appealed by the applicant. An applicant who would be subject to such a denial

and review at any university governed by the board of regents shall be subject to the same denial and review by the other two ~~regents~~ *regent* universities if application for admission *or employment* is made to them. The three universities shall cooperate in making known the identity of such persons *barred from admission or employment* among all three institutions.

ITEM 3. Amend rule 681—9.3(262) as follows:

**681—9.3(262) Regents approved judicial system** *Alternate procedures when resources are not adequate.*

**9.3(1)** If, in the university president's judgment, the university's ~~disciplinary procedures~~ *resources* are not adequate to the task of ~~enforcement~~ *providing hearings regarding violations* of rules governing conduct at the institution on any particular occasion, the president may ~~temporarily set aside or supplement local administrative disciplinary procedures by appointing a hearing examiner from a panel of hearing examiners who have previously been approved by the board of regents~~ *appoint one or more hearing examiners. Hearing examiners shall be licensed attorneys in the state of Iowa or shall have experience administering student judicial processes for a public institution.*

**9.3(2)** ~~The examiner so appointed finds the facts, and, if a violation is found, recommends to the president, or designee, as to sanctions. In the event review is sought from the president's decision, requests for review may be made to the board of regents, and the board may in its discretion review the case.~~

## NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

April 1, 2004 — April 30, 2004	6.00%
May 1, 2004 — May 31, 2004	5.75%
June 1, 2004 — June 30, 2004	6.25%
July 1, 2004 — July 31, 2004	6.75%
August 1, 2004 — August 31, 2004	6.75%
September 1, 2004 — September 30, 2004	6.50%
October 1, 2004 — October 31, 2004	6.25%
November 1, 2004 — November 30, 2004	6.25%
December 1, 2004 — December 31, 2004	6.00%
January 1, 2005 — January 31, 2005	6.25%
February 1, 2005 — February 28, 2005	6.25%
March 1, 2005 — March 31, 2005	6.25%
April 1, 2005 — April 30, 2005	6.25%

## ARC 4114B

CAPITAL INVESTMENT BOARD,  
IOWA[123]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 15E.63, the Iowa Capital Investment Board hereby adopts amendments to Chapter 4, "Investment Tax Credits Relating to Investments in a Fund of Funds Organized by the Iowa Capital Investment Corporation," Iowa Administrative Code.

These amendments are adopted pursuant to 2005 Iowa Acts, Senate File 114.

Item 1 amends rule 123—4.1(15E) to clarify that contingent tax credits are available to designated investors in the Iowa fund of funds.

Item 2 amends rule 123—4.2(15E) to include changes to definitions.

Item 3 amends rule 123—4.3(15E) to include changes regarding the report issued by the Iowa Capital Investment Corporation.

Item 4 amends rule 123—4.4(15E) to include changes regarding the allocation and issuance of tax credit certificates.

Item 5 amends rule 123—4.5(15E) to include changes regarding the procedures for the verification of tax credits.

Item 6 amends rule 123—4.6(15E) to include changes regarding the contractual nature of the tax credit certificate and the irrevocability of these tax credits.

Item 7 amends rule 123—4.7(15E) to include changes regarding the transfer of the tax credit certificates.

Item 8 amends rule 123—4.8(15E) to include changes regarding the cancellation of tax credits upon receipt of the scheduled rate of return by designated investors.

Item 9 amends rule 123—4.9(15E) to include changes regarding the time frame for replacing lost or mutilated tax credit certificates.

Item 10 amends rule 123—4.10(15E) to include changes regarding claiming the tax credits.

Item 11 rescinds rules 123—4.13(15E) through 123—4.16(15E), which are now obsolete due to the anticipated structure of the Iowa fund of funds.

Item 12 amends the implementation clause for 123—Chapter 4.

These amendments are being filed by the Department of Revenue on behalf of the Iowa Capital Investment Board pursuant to an Administrative Services Agreement between the Department and the Board.

In compliance with Iowa Code section 17A.4(2), the Board finds that notice and public participation are impracticable because of the need to implement the new provisions of this law.

The Board also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing with the Administrative Rules Coordinator on March 25, 2005. The Iowa Capital Investment Corporation is expecting investments in the Iowa fund of funds within the next 30 days, and these rules need to be in place so that guidance can be provided for the contingent tax credits available for these investments.

The Iowa Capital Investment Board adopted these rules on March 24, 2005.

These amendments are also published herein under Notice of Intended Action as **ARC 4113B** to allow public comment.

This emergency filing permits the Board to implement these new provisions.

These amendments are intended to implement Iowa Code chapter 15E as amended by 2005 Iowa Acts, Senate File 114.

These amendments became effective March 25, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend rule 123—4.1(15E) as follows:

**123—4.1(15E) Contingent tax credits relating to investments in Iowa fund of funds.** Contingent tax credits are available for ~~investments made~~ *designated investors* in the Iowa fund of funds organized by the Iowa capital investment corporation in accordance with Iowa Code section 15E.65. Tax credit certificates related to the contingent tax credits will be issued by the Iowa capital investment board. If the tax credit certificates are redeemed, a taxpayer may claim a credit against the taxpayer's tax liability for personal net income tax imposed under Iowa Code chapter 422, division II; business tax on corporations imposed under Iowa Code chapter 422, division III; taxation of financial institutions imposed under Iowa Code chapter 422, division V; taxation of insurance companies imposed under Iowa Code chapter 432; or taxation of credit unions imposed under Iowa Code section 533.24.

ITEM 2. Amend rule 123—4.2(15E) as follows:

**123—4.2(15E) Definitions.** The following definitions are applicable to this chapter:

"Act" means Iowa Code sections 15E.61 through 15E.69.

"Actual return" means the actual aggregate amount of moneys or the fair market value of property received from a fund of funds by ~~all designated investors in such fund of funds (or class of equity interests in such fund of funds), and any transferees of such designated investors, a designated investor, with respect to an investment amount for which a certificate is issued,~~ including amounts received as returns of invested capital; *or* returns on invested capital and amounts received in excess of invested capital, in whatever form received *for the period from the date of the closing to the date on which the certificate is redeemed.*

"Board" means the Iowa capital investment board created under Iowa Code section 15E.63.

"Certificate" or "tax credit certificate" means a document constituting a contract between the state of Iowa and a holder and evidencing a tax credit that has been issued and, subject to the contingencies described on the certificate, that may become available to the holder.

"Certificate register" means the register to be maintained by the department recording the name, address, and taxpayer identification number of each holder and the maximum potential amount of the tax credits represented by each certificate issued to each holder.

"Closing" means a time when a *certificate is issued to a designated investor contributes in exchange for a commitment to contribute cash to the capital of a fund of funds.*

"Commitment" or "commits" means *either a binding obligation undertaken at a closing to invest in a fund of funds in the future or an actual investment made in a fund of funds, but without counting the same amount twice.*

## CAPITAL INVESTMENT BOARD, IOWA[123](cont'd)

"Contingencies" shall mean the conditions under which a tax credit may be claimed and shall include ~~and be limited to~~ each of the following:

1. The condition that the tax credits may only be used to the extent that the actual return *on the investment amount associated with respect to the applicable fund of funds (or class of equity interests in such fund of funds) the certificate* is less than the applicable scheduled return *on such investment amount*, and then only to the extent such tax credit becomes a verified tax credit;

2. The condition that the *percentage amount* of the total verified tax credits represented by such certificate that first may be claimed during any redemption year will be limited to the *percentage amount* verified by the board to the department;

3. The condition that no amount of the tax credit may be claimed prior to ~~the redemption a maturity date for stated on the applicable fund of funds certificate~~; and

4. The condition that receipt by the designated investors ~~in the applicable fund of funds (or class of equity interests in such fund of funds) investor~~ of an actual return *on the investment amount associated with the certificate* equal to the scheduled return *on such investment amount* will result in the cancellation of the tax credit certificate.

"Day" means any weekday Monday through Friday that is not a legal holiday in the state of Iowa.

"Department" means the Iowa department of revenue.

"Designated investor" means a natural person or an entity, other than the Iowa capital investment corporation or the revolving fund, that ~~contributes~~ *has committed to contribute* capital to a fund of funds, and such person's *or entity's* successors and assignees.

"Fiscal year" means the fiscal year for the state of Iowa.

"Fund of funds" means any private, for-profit limited partnership or limited liability company established by the ~~revolving fund Iowa capital investment corporation~~ to which a designated investor ~~makes commits to make~~ a capital contribution.

"Holder" means a holder of a tax credit certificate, either as a designated investor or as a transferee of a designated investor, as reflected on the certificate register.

"Investment amount" means the amount of cash contributed by a designated investor to a fund of funds ~~at a closing with respect to which a certificate has been issued~~.

"Iowa capital investment corporation" means the private, nonprofit corporation created pursuant to Iowa Code section 15E.64.

"Maturity date" means *a specific date or dates specified in a certificate, representing the earliest date on which a holder of the certificate may use it to satisfy tax liabilities*.

"Percentage of return" means the percentage represented by the quotient of (1) the actual return for ~~all designated investors in a fund of funds (or class of equity interests in such fund of funds) a designated investor on the investment amount associated with a certificate~~ divided by (2) the scheduled return for such designated ~~investors investor on such investment amount~~.

"Portfolio entity" means a venture capital fund or direct investment entity in which a fund of funds makes an investment.

"Redeem" means, *with respect to a certificate, to present such certificate to the department as payment for tax liabilities due or to become due on or after the date of such presentation*.

"Redemption date" means ~~a specific calendar year date on which a fund of funds is scheduled to have liquidated its interest in all portfolio entities and to have made the final~~

~~distribution of the proceeds thereof to designated investors in accordance with the limited partnership agreement or operating agreement of such fund of funds and these rules, provided that in no event shall the redemption date be a date less than five years from the last closing for such fund of funds.~~

"Redemption year" means each calendar year for which verified tax credits ~~related to a fund of funds associated with a certificate~~ may *first* be utilized to reduce tax liabilities. ~~The first redemption year for a fund of funds shall be the calendar year of the redemption date.~~

"Revolving fund" means the private, for-profit limited ~~partnership liability company~~ established by the Iowa capital investment corporation as a revolving fund of funds pursuant to Iowa Code section 15E.65.

"Scheduled return" means ~~the scheduled rates of return or the scheduled redemptions of equity interests return, whether in money or property, (including returns of and returns on investment) for all with respect to an investment amount associated with a certificate issued to a designated investors investor in a fund of funds (or class of equity interests in such fund of funds) determined in accordance with the limited partnership agreement or the operating agreement of such fund of funds and as specified by any rules relating to such fund of funds for the period from the date of the closing to the date on which the certificate is redeemed.~~

"Tax credit" means a contingent tax credit authorized pursuant to Iowa Code section 15E.66 that is available against tax liabilities up to the amount stated on the certificate for such tax credit, ~~which amount may not exceed the amount by which the scheduled return exceeds the actual return.~~

"Tax liabilities" means those tax liabilities identified in rule 123—4.1(15E).

"Verified tax credits" means tax credits that have been verified by the board to the department and to the holder of the certificate that represents such tax credits.

ITEM 3. Amend rule 123—4.3(15E) as follows:

**123—4.3(15E) Report of the Iowa capital investment corporation.** No less than ~~30~~ *ten* days prior to each closing, the Iowa capital investment corporation shall deliver a written report to the board and to the department containing the following information:

1. A copy of the certificate of limited partnership or articles of organization of the ~~revolving fund and the fund of funds~~ for which the closing is scheduled, certified by the Iowa secretary of state;

2. A summary of the terms of the anticipated investments in such fund of funds as contained in the limited partnership agreement or the operating agreement of the fund of funds; *and*

3. *A statement of the anticipated date of the closing.*

No less than two days prior to each closing, the Iowa capital investment corporation shall deliver to the board a signed statement of an officer of the Iowa capital investment corporation ~~stating certifying~~ the names, addresses and taxpayer identification numbers of the persons expected to be designated investors at the closing, the total amount of the capital ~~contributions commitments~~ expected to be received at the closing, the maximum amount of tax credits to be represented by each certificate to be issued at the closing, the date of the anticipated closing, ~~and the redemption date for the fund of funds the maturity date or dates for each certificate to be issued at the closing, the contingencies applicable to the tax credits, and the calculation formula for determining the scheduled return.~~

## CAPITAL INVESTMENT BOARD, IOWA[123](cont'd)

ITEM 4. Amend rule 123—4.4(15E) as follows:

**123—4.4(15E) Allocation and issuance of certificates.** Certificates shall be issued only by the board and only with respect to an actual cash capital contribution commitment to a fund of funds by a designated investor, and not merely with respect to a commitment by a designated investor to make such a capital contribution.

~~The following receipt of the certification of the Iowa capital investment corporation shall certify to the board the investment amount for each designated investor in each closing and the maximum amount of tax credits that may become available by reason of such investment amount (subject to all contingencies), and pursuant to rule 123—4.3(15E), the board shall issue a certificate to each such designated investor at the closing. The maximum amount of tax credits represented by each certificate shall be calculated in accordance with the limited partnership agreement or operating agreement of the applicable fund of funds. The board shall not issue certificates if, in the aggregate, the maximum amount of tax credits represented by all issued and uncanceled certificates at any time would exceed \$100 million (less the aggregate amount of any tax credits that have been used to reduce tax liabilities) calculated in accordance with Iowa Code section 15E.66.~~

A tax credit certificate shall contain, ~~or incorporate by reference to another document,~~ each of the following:

1. The name, address, and tax identification number of the holder;
2. The investment amount ~~associated with committed upon issuance of that certificate and (if applicable) the class of interests issued to the designated investor that has contributed committed to make such investment amount;~~
3. All of the contingencies applicable to the tax credits;
4. The date of issue of the certificate;
5. The maximum amount of the tax credit represented by the certificate;
6. The ~~redemption maturity date or dates of the~~ certificate;
7. The calculation formula for determining the scheduled return;
8. The calculation formula for determining the amount of the tax credit that may be used to reduce tax liabilities;
9. If the certificate is issued upon a transfer after the ~~redemption date for the related fund of funds verification in accordance with 123—4.5(15E), the amount of the verified tax credits represented by such certificate and the redemption year(s) for which they may be used to reduce tax liabilities; and~~
10. A statement that, although the certificate is not considered a security pursuant to Iowa Code chapter 502, the certificate ~~does constitute~~ constitutes a security as such term is defined in Iowa Code section 554.8102(1)“o” solely for purposes of the creation, perfection, priority and enforcement of security interests.

ITEM 5. Amend rule 123—4.5(15E) as follows:

**123—4.5(15E) Procedures for verification of tax credits.**

**4.5(1)** *At any time after the applicable maturity date for a certificate, the holder may present such certificate to the Iowa capital investment corporation for certification. Within 10 ten days after the redemption date for a fund of funds receipt of such certificate, the Iowa capital investment corporation shall certify to the board the percentage of return for*

*the designated investors in such fund of funds (or for a class of designated investors in such fund of funds) investor for such certificate. If the percentage of return is less than 100 percent, the Iowa capital investment corporation shall certify the resulting total amount of tax credits per dollar of investment amount to be verified for use by holders of certificates related to such fund of funds (or to a class of equity interests in such fund of funds) the holder of such certificate in accordance with the terms of the limited partnership agreement or the operating agreement of the fund of funds. The Iowa capital investment corporation shall give notice of such percentage of return and such amount of tax credits per dollar of investment amount to each to the holder of a such certificate related to such fund of funds at the holder's address as it appears on the certificate register.*

**4.5(2)** Within 30 ten days after the certification of the Iowa capital investment corporation to the board of the percentage of return for a fund of funds (or for a class of equity interests in such fund of funds) certificate, the board shall establish and verify the percentage amount of tax credits related to that fund of funds (or a class of equity interests in such fund of funds) certificate, if any, that may be initially used in each redemption year so that each of the following tests will be satisfied:

a. ~~No no~~ more than \$20 million in tax credits, in the aggregate, may become useable to reduce tax liabilities in any fiscal year (provided that such \$20 million limitation shall not limit the carryforward of tax credits otherwise authorized by the Act or these rules);

b. ~~One hundred percent of each holder's tax credits relating to such fund of funds shall become available to reduce tax liabilities starting with the first redemption year for that fund of funds and expiring no later than the end of the fourth fiscal year after the first redemption year for that fund of funds; and~~

c. ~~Tax credits shall become verified tax credits for each holder of a certificate related to a fund of funds pro rata with all other holders of certificates related to such fund of funds. Except to the extent specifically required by the \$20 million annual limitation, all tax credits relating to a verified certificate shall be useable to satisfy tax liabilities beginning on the maturity date and ending at the expiration of the carryforward period specified in rule 123—4.10(15E).~~

**4.5(3)** The board shall issue to each the holder of such certificate a verification setting forth for each certificate held by such holder (a) the amount of verified tax credits represented by such certificate (if any) and (b) the amount of verified tax credits represented by such certificate that may first become useable to reduce tax liabilities in any redemption year (if any).

**EXAMPLE:** The redemption date for a hypothetical fund of funds is August 31, 2010, and an aggregate of \$30 million in tax credits related to that hypothetical fund of funds shall become verified tax credits, of which an aggregate of \$20 million may be used to reduce tax liabilities in the fiscal year July 1, 2010, through June 30, 2011, and an aggregate of \$10 million may be used to reduce tax liabilities in the fiscal year July 1, 2011, through June 30, 2012. There are three holders of certificates with respect to such fund of funds: Holder A is entitled to an aggregate of \$15 million of tax credits and Holders B and C are each entitled to an aggregate of \$7.5 million in tax credits. Holder A is a calendar year taxpayer. Holder B's tax year for state income tax purposes ends

## CAPITAL INVESTMENT BOARD, IOWA[123](cont'd)

November 30, and Holder C's tax year for state income tax purposes ends May 31. These holders may use the verified tax credits to reduce tax liabilities as follows:

Holder	Holder's Tax Year End for Which Tax Credits May Be Used	Amount of Tax Credits that Holder May Use to Reduce Tax Liabilities for Such Year	Corresponding State Fiscal Year-Ending
A	12/31/10	\$10 million	6/30/11
A	12/31/11	\$5 million	6/30/12
B	11/30/10	\$5 million	6/30/11
B	11/30/11	\$2.5 million	6/30/12
C	5/31/11	\$5 million	6/30/11
C	5/31/12	\$2.5 million	6/30/12

**4.5(4)** *If the verified certificate has more than one maturity date, the board shall issue to the holder a certificate for the verified tax credits. The verified certificate will contain no contingencies. The board shall issue one or more balance certificates for any maturity dates for which tax credits are not then being verified.*

**4.5(5)** *Certificates being verified for a maturity date shall be verified pro rata with all other certificates being verified for the same maturity date.*

ITEM 6. Amend rule 123—4.6(15E) as follows:

**123—4.6(15E) Contractual nature of certificates; irrevocability of tax credits.** Upon the contribution by a designated investor of an investment amount to the capital of a fund of funds issuance of a certificate, the entitlement of a holder to use the tax credits represented by the certificate associated with such investment amount shall be final and permanent, subject only to the contingencies *expressly stated or incorporated by reference in the certificate*, and such entitlement shall not be subject to any further condition, reduction, modification, amendment, change, or revocation, or recapture.

The entitlement of a holder to claim tax credits represented by a certificate shall be in the nature of *constitute* a contract between the state of Iowa on the one hand and such holder and the holder's successors and assignees on the other hand which shall not be subject to modification, amendment, change or rescission without prior written consent of the holder as of the date of any such purported action. No such modification, amendment, change or rescission to which a holder may have agreed shall be binding upon any of the successors or assignees of such holder unless it is stated in the text of the certificate issued to such successor or assignee.

The entitlement of a holder to claim tax credits represented by a *such* certificate shall not be affected in any way or become subject to forfeiture or recapture by:

1. Action or inaction of the holder or designated investor following payment of the investment amount associated with such certificate;

2. The transfer by the designated investor of all or any portion of the designated investor's interest in a fund of funds;

3. The determination after the date of initial issuance of such certificate closing that a fund of funds was not organized or did not make its investments in accordance with the requirements of the Act or these rules;

4. The invalidity or illegality for any reason of the existence or functions of the board, the revolving fund, a fund of funds or the Iowa capital investment corporation or the investments made by a fund of funds or one or more of the portfolio entities;

5. The bankruptcy, insolvency, reorganization, merger, consolidation, dissolution or liquidation of the board, the revolving fund, any fund of funds, the Iowa capital investment corporation or any portfolio entity for any reason; or

6. The level, timing, or degree of success of any fund of funds or any portfolio entities, or the extent to which venture capital funds that are portfolio entities are invested in Iowa venture capital projects, or are successful in accomplishing any economic development objective.

If the legal existence of the board, the revolving fund, a fund of funds, the Iowa capital investment corporation or the department is ended or some or all of their *its* respective functions are transferred to another entity at any time prior to the full use of 100 percent of the tax credits that could potentially be represented by all of the certificates, the board or its successor (or the state of Iowa if the legal existence of the board ends or the board ceases to have the requisite authority and there is no successor with such authority) shall adopt such rules as may be necessary to ensure the continuity and effectiveness of the entitlement of each holder to use the tax credits represented by such holder's certificate.

Once the investment amount has been paid by a designated investor Upon the closing, a certificate shall be binding on the board and, the department, and the state of Iowa, and the tax credits represented thereby shall not be modified, terminated, or rescinded or subject to recapture.

ITEM 7. Amend rule 123—4.7(15E) as follows:

**123—4.7(15E) Transfer of tax credit certificates.** Certificates shall be transferable by the holders and any subsequent holders to any transferee or transferees.

Transfer of a certificate may be effected only by the holder's surrender of the certificate to the board with an endorsement in favor of the transferee, or transferees, and a statement containing the name, address and tax identification number of the transferee, and a written request for the board to issue a replacement certificate or certificates in the name of the transferee(s) (as well as, in any case where the transferor requests that more than one replacement certificate be issued, a statement by the transferor that sets forth the percentages of the aggregate amount of tax credits represented by the transferred certificate that are to be represented by each replacement certificate).

Within 30 *ten* days after the surrender and endorsement of a certificate, the board shall issue a replacement certificate or certificates in the name of the transferee(s). Once a transferor of a certificate has surrendered a certificate to the board, such transferor may no longer use the tax credits represented by such certificate.

A holder shall have the right to pledge and grant security interests in certificates and tax credits held by such holder as collateral for loans to or other obligations of such holder.

ITEM 8. Amend rule 123—4.8(15E) as follows:

**123—4.8(15E) Cancellation of tax credits upon receipt of scheduled return.** Tax credits *represented by a certificate* are subject to cancellation only *as provided in the certificate* and upon receipt by the designated ~~investors~~ investor of an actual return equal to the *designated investor's* scheduled return with respect to such certificate. At the time of each distribution to a designated ~~investors~~ investor in a fund of funds (or to a class of designated investors in such fund of funds) prior to the redemption date, the Iowa capital investment corporation shall determine the amount of tax credits related to such fund of funds (or to a class of equity interests in such fund of funds) each certificate that have been canceled and have become null and void by reason of such distribution, if any, and shall

CAPITAL INVESTMENT BOARD, IOWA[123](cont'd)

certify such amount to the board. After any such certification, the board shall certify to each the holder of a *each such* certificate ~~related to tax credits that have been canceled~~, at the holder's address as shown on the certificate register, and to the department the amount of tax credits that are deemed to have been canceled and to be null and void. If at any time prior to ~~the redemption date a verification of a certificate~~ the actual return ~~from a fund of funds to designated investors (or to a class of designated investors in such fund of funds) of a designated investor~~ shall equal the *designated investor's* scheduled return *with respect to such certificate, and all other conditions for cancellation contained in the certificate have been met*, the Iowa capital investment corporation shall so certify to the board. After any such certification, the board shall certify to each such holder at the holder's address as shown on the certificate register and to the department that ~~all such certificates relating to such fund of funds (or class of equity interests in such fund of funds)~~ shall be deemed to have been canceled and to be null and void. Tax credits ~~in respect to a fund of funds~~ that are canceled may be reissued *in with respect to the same or another fund of funds*.

ITEM 9. Amend rule 123—4.9(15E) as follows:

**123—4.9(15E) Lost or mutilated tax credit certificates.** Upon receipt of evidence satisfactory to the board of the loss, theft, destruction or mutilation of any certificate, and in case of any such loss, theft or destruction, upon delivery of any indemnity agreement satisfactory to the board, or in case of any such mutilation, upon surrender and cancellation of such certificate, the board shall issue and deliver to the holder a replacement certificate *within ten days*.

ITEM 10. Amend rule 123—4.10(15E), introductory paragraph, as follows:

**123—4.10(15E) Claiming the tax credits.** The holder shall attach a copy of the verification or (if the applicable certificate has been transferred after the date of such verification) a copy of the certificate issued to such holder to any tax return in which verified tax credits are used to reduce tax liabilities. Verified tax credits may be carried forward by the holder for use in any of the seven calendar years following the ~~applicable redemption year initial redemption year~~. *Verified tax credits may be used to make estimated tax payments insofar as the holder may take the amount of the tax credit into account in calculating the holder's estimated annual tax liability, thus reducing or eliminating the amount of estimated tax that would otherwise be payable. Verified tax credits not used after the expiration of such seven-calendar-year period shall be deemed to have been canceled and to be null and void and may be reissued in respect to the same or another fund of funds.*

ITEM 11. Rescind and reserve rules **123—4.13(15E)** through **123—4.16(15E)**.

ITEM 12. Amend the implementation clause for **123—Chapter 4** as follows:

These rules are intended to implement Iowa Code chapter 15E as amended by 2002 2005 Iowa Acts, ~~chapter 1005 Senate File 114~~.

[Filed Emergency 3/25/05, effective 3/25/05]

[Published 4/13/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/13/05.

## ARC 4097B

### LOTTERY AUTHORITY, IOWA[531]

#### Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 99G.9(3), the Iowa Lottery Authority hereby amends Chapter 14, "Monitor Vending Machines," Iowa Administrative Code.

Chapter 14 is being amended as a result of comments that the Lottery has received regarding the launch of its monitor vending machines (MVMs). Specifically, the Lottery received a complaint of false and misleading advertising pertaining to MVMs installed at three convenience store locations in the Quad Cities. While the Lottery had the advertisements in question removed within hours of being informed of them, these amendments are necessary in order to ensure that other retailers or premises operators do not place any other false or misleading advertisements. The amendments not only specifically prohibit false and misleading advertising, but also establish specific penalties for MVM retailers and MVM premises operators that place such advertisements in violation of the rules.

In compliance with Iowa Code section 17A.4(2), the Iowa Lottery Authority finds that notice and public participation are unnecessary and impracticable due to the immediate need for these amendments in order to ensure that the public receives accurate information about MVMs, which will provide additional safeguards to the integrity of lottery operations.

The Iowa Lottery Authority also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and that these amendments should be made effective upon filing with the Administrative Rules Coordinator on March 15, 2005, because they confer a benefit on the public by ensuring that only accurate information regarding lottery products is distributed.

The Iowa Lottery Authority Board adopted these amendments on March 15, 2005.

These amendments are also published herein under Notice of Intended Action as **ARC 4096B** to allow for public comment.

These amendments are intended to implement Iowa Code chapter 99G.

These amendments became effective March 15, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend rule 531—14.13(99G) by adopting **new** subrule 14.13(2) as follows and renumbering subrules **14.13(2)** through **14.13(4)** as **14.13(3)** through **14.13(5)**:

**14.13(2)** Advertising by MVM retailers.

a. When referring to MVMs or their associated games in advertisements, signage, promotional materials, or any other similar items, MVM retailers shall not use any false or misleading terms or statements including, but not limited to, "casino," "slot machine," "slots," "video lottery," "VLTs," "video slots," "video poker," or any other related terms.

b. Upon suspicion that an MVM retailer has violated 14.13(2)"a," the lottery shall investigate and provide a written warning to the MVM retailer describing the report of the event and of the potential violation of 14.13(2)"a." In the event the lottery can substantiate the claim that an MVM re-

LOTTERY AUTHORITY, IOWA[531](cont'd)

tailer has violated 14.13(2)"a," the lottery shall suspend the license of the MVM retailer in question for 7 days. If the lottery can substantiate the claim that an MVM retailer has violated 14.13(2)"a" a second time in a period of one year from the date of the first event, the lottery shall suspend the MVM retailer license for a period of 30 days. If the lottery can substantiate the claim that an MVM retailer has violated 14.13(2)"a" at a given MVM premises a third time in a period of one year from the date of the first event as described in this rule, the lottery shall suspend the license of the MVM retailer in question for one year.

ITEM 2. Amend subrule **14.14(1)**, paragraph **"b,"** as follows:

b. Violating any of the provisions of Iowa Code Supplement chapter 99G or, these rules, or the MVM premises operator license terms and conditions.

ITEM 3. Amend rule 531—14.14(99G) by adopting new subrule 14.14(2) as follows and renumbering subrules **14.14(2)** and **14.14(3)** as **14.14(3)** and **14.14(4)**:

**14.14(2)** Advertising by MVM premises operators.

a. When referring to MVMs or their associated games in advertisements, signage, promotional materials, or any other similar items, MVM premises operators shall not use any false or misleading terms or statements including, but not limited to, "casino," "slot machine," "slots," "video lottery," "VLTs," "video slots," "video poker," or any other related terms.

b. Upon suspicion that an MVM premises operator has violated 14.14(2)"a," the lottery shall investigate and provide a written warning to the MVM premises operator describing the report of the event and of the potential violation of 14.14(2)"a." In the event the lottery can substantiate the claim that an MVM premises operator has violated 14.14(2)"a," the lottery shall suspend the license of the MVM premises operator in question for 7 days. If the lottery can substantiate the claim that an MVM premises operator has violated 14.14(2)"a" a second time in a period of one year from the date of the first event on the same MVM premises, the lottery shall suspend the MVM premises operator license for a period of 30 days. If the lottery can substantiate the claim that an MVM premises operator has violated 14.14(2)"a" at a given MVM premises a third time in a period of one year from the date of the first event as described in this rule, the lottery shall suspend the license of the MVM premises operator in question for one year.

[Filed Emergency 3/15/05, effective 3/15/05]

[Published 4/13/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/13/05.

## ARC 4116B

### PUBLIC SAFETY DEPARTMENT[661]

#### Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 103A.7, the Building Code Commissioner, with the approval of the Building Code Advisory Council, hereby amends Chapter 16, "State of Iowa Building Code," Iowa Administrative Code.

While provisions of the State of Iowa Building Code generally apply to buildings owned by the State of Iowa and to buildings and facilities constructed in local jurisdictions which have adopted the State of Iowa Building Code, rules establishing standards for factory-built structures, including manufactured housing, apply statewide.

Among the requirements established for manufactured homes in the State of Iowa Building Code are standards for support and anchoring systems found in rule 661—16.626(103A) and approval procedures for these systems found in rule 661—16.629(103A) and requirements for approval of existing tie-down systems found in rule 661—16.627(103A).

It has recently become apparent that there may be some confusion about the wording of rule 661—16.626(103A), especially in regard to the circumstances under which installation of a manufactured home may deviate from the manufacturer's installation instructions or an alternative support and anchoring system designed by a licensed professional engineer. While an alternative system is outlined in the rule, this alternative is not acceptable except when a manufacturer's installation instructions are unavailable. The amendments adopted herein are intended to make entirely clear the circumstances under which the alternative support and anchoring system outlined in rule 661—16.626(103A) may be used. The adopted amendments also delete a provision, intended to be available under very limited circumstances, which allows the use of a system in which pier foundations would not be required to extend below the frostline. The use of this provision may result in structurally unsound installations, so it is being eliminated.

Rule 661—16.627(103A) refers in several places to "the effective date of these rules." This usage is no longer accepted, so the phrase is being replaced by the actual effective date of rule 661—16.627(103A), which was August 12, 1983.

If an installation adheres to the requirements of rule 661—16.626(103A), further approval by the Building Code Commissioner is not required. However, submission of support and anchoring system specifications is needed, so the approval procedures specified in rule 661—16.629(103A) are being replaced with requirements for submission of specifications and installation instructions for support and anchoring systems.

Pursuant to Iowa Code section 17A.4(2), the Department finds that notice and public participation prior to the adoption of these amendments is impractical. Confusion has arisen about the conditions under which alternatives to following the manufacturer's installation instructions for manufactured homes are permitted under rule 661—16.626(103A). Immediate enactment of these amendments will forestall further confusion.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department further finds that the normal effective date of these amendments, 35 days after publication, should be waived and these amendments made effective April 1, 2005, after filing with the Administrative Rules Coordinator. These amendments confer a benefit upon the public by increasing the safety of installations of manufactured homes thereby enhancing the likelihood that these installations of manufactured homes will comply with requirements established to ensure the safety and structural soundness of the installed homes.

These amendments are also published herein under Notice of Intended Action as **ARC 4115B**. The Notice of Intended Action will allow for public comment and participation regarding these amendments, including a public hearing,

PUBLIC SAFETY DEPARTMENT[661](cont'd)

which will be held on May 17, 2005, at 10 a.m. in the conference room at the office of the Fire Marshal Division, 401 SW 7th Street, Des Moines, Iowa 50309.

These amendments are intended to implement Iowa Code section 103A.7.

These amendments became effective on April 1, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend rule 661—16.626(103A) as follows:

**661—16.626(103A) Support and anchorage of manufactured homes.**

**16.626(1)** Manufactured homes shall be installed with *either*:

a. With support and anchorage as recommended by the manufacturer and required by federal manufactured home construction and safety standards, 24 CFR Section 3280.306(b), as published April 1, 2004; or

b. As an alternate to the manufacturer's recommended instructions, With a support and anchorage system designed by a registered licensed professional engineer may be used; or

c. Subrules 16.626(1) and 16.626(2) are the minimum requirements for With a support and anchorage systems system which complies with subrules 16.626(2) and 16.626(3). This option shall apply only if a the manufacturer's instructions are not available or for units which were manufactured the unit was manufactured before June 15, 1976, and no installation instructions are available. "The manufacturer's instructions are not available" means that the installer has requested and been unable to obtain the instructions from the manufacturer or its successor company and has requested and been unable to obtain the instructions from the building code bureau.

EXCEPTION: Minor adjustments in pier locations may be necessary to avoid utility and service lines. Additional supports may be needed to ensure that the maximum distance between supports and anchors is maintained.

**16.626(4 2)** Requirements for support system installations.

a. No change.

b. Pier foundations shall be placed below the frostline on level and undisturbed soil, or on controlled fill, which is free of grass and organic materials. (A small amount of sand may be of use to provide a level surface.) All pier foundations shall be set level and piers must be installed plumb. The pier foundation shall be at least a 16" × 16" × 4" solid concrete pad, precast or poured in place, or other approved material. Two nominal 4" × 8" × 16" solid concrete blocks may be used

provided the joint between the blocks is parallel to the main frame longitudinal beam. Concrete used in foundations shall have a 28-day compressive strength of not less than 3,000 pounds per square inch (3000 psi).

EXCEPTION: Pier foundations may be exempt from extending below the frost line on manufactured home installations, only if the owner agrees to be responsible for the loosening of the anchor system on or about November 1 to prevent frost heave damage to the unit, and to retighten the anchors each spring. A statement to this effect is on the installation certificates and a space is provided for the owner's signature.

c. and d. No change.

**16.626(2 3)** Requirements for anchorage systems. When instructions are not provided by the manufacturer, ties shall be attached vertically and diagonally to a system of ground anchors in a manner as illustrated in Figures 4 and 5. The minimum number of ties required are listed in Table 6-A. There shall be a diagonal tie between the ground anchors and the unit at each vertical tie. Additional diagonal ties may be required between vertical ties. The ties shall be as evenly spaced as practicable along the length of the unit with not over 8 feet open on each end.

a. to g. No change.

ITEM 2. Amend rule **661—16.627(103A)** by striking the words "the effective date of these rules" and inserting in lieu thereof "August 12, 1983," wherever they occur.

ITEM 3. Rescind rule 661—16.629(103A) and insert in lieu thereof the following **new** rule:

**661—16.629(103A) Support and anchoring systems submission.**

**16.629(1)** Submission by manufacturer. The manufacturer of each manufactured home installed in Iowa shall submit to the building code commissioner a copy of the installation instructions by mail in printed form and in an electronic form acceptable to the commissioner.

**16.629(2)** Submission by licensed professional engineer. A licensed professional engineer who designs a support and anchoring system for use in the installation of a manufactured home in Iowa shall submit to the building code commissioner a copy of the specifications and instructions for the system by mail in printed form and in an electronic form acceptable to the building code commissioner. A support and anchoring system designed by a licensed professional engineer shall not be utilized unless it has been submitted to the building code commissioner in compliance with this subrule.

[Filed Emergency 3/25/05, effective 4/1/05]

[Published 4/13/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/13/05.



## ARC 4103B

ADMINISTRATIVE SERVICES  
DEPARTMENT[11]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 8A.104, the Administrative Services Department hereby amends Chapter 9, "Waivers," Iowa Administrative Code.

The purpose of this amendment is to eliminate the authority of the Director to initiate waivers on the Director's own motion. This change is based on AT&T Communications of the Midwest, Inc. v. Iowa Utilities Board, et al., 687 N.W.2d 554 (Iowa 2004) that found that the ability to grant a waiver sua sponte is beyond the scope of authority granted to a state agency by Iowa Code section 17A.9A.

Notice of Intended Action was published in the February 16, 2005, Iowa Administrative Bulletin as **ARC 3981B**. No public comments were received. The adopted amendment is identical to that published under Notice.

This amendment was adopted on March 23, 2005.

This amendment will become effective on May 18, 2005.

This amendment is intended to implement Iowa Code section 17A.9A.

The following amendment is adopted.

Amend rule 11—9.4(17A,8A), introductory paragraph, as follows:

**11—9.4(17A,8A) Granting a waiver.** In response to a petition completed pursuant to rule 9.6(17A,8A) ~~or on the director's own motion~~, the director may, in the director's sole discretion, issue an order waiving in whole or in part the requirements of a rule.

[Filed 3/23/05, effective 5/18/05]

[Published 4/13/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/13/05.

## ARC 4112B

AGRICULTURE AND LAND  
STEWARDSHIP DEPARTMENT[21]

## Adopted and Filed

Pursuant to the authority of Iowa Code sections 159.5(11) and 214A.2, the Department of Agriculture and Land Stewardship hereby amends Chapter 85, "Weights and Measures," Iowa Administrative Code.

This amendment makes two changes relating to standards for motor vehicle fuel, antifreeze, oxygenate octane enhancers, and raffinate natural gasoline. One change updates the reference to standards established by the American Society for Testing and Materials (ASTM) from January 1, 2000, to January 1, 2005; however, the amendment delays the effective date of the ASTM standard relating to diesel fuel lubricity until October 1, 2005. The second change reduces the maximum amount of methyl tertiary butyl ether (MTBE) allowed in motor vehicle fuel from two percent to one-half of one percent by volume. This change is made to make the rule conform to statutory requirements in Iowa Code section 214A.18.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 2, 2005, as **ARC 3965B**. Comment was received from one individual who represents a major petroleum industry association. The comment was supportive of the rule making; however, the comment requested that a change be made to the proposed amendment. The proposed amendment delayed the enforcement date of the diesel fuel lubricity standard until October 1, 2005. The comment requested that, rather than delay enforcement, the adopted amendment should provide that the diesel fuel lubricity standard shall not become effective until October 1, 2005. This change has been made.

No waiver provision is included in this amendment because an existing rule allows for waivers in appropriate cases. The waiver rule also applies to this amendment.

This amendment is intended to implement Iowa Code chapter 214A.

This amendment shall become effective on May 18, 2005. The following amendment is adopted.

Amend rule 21—85.33(214A,208A) as follows:

**21—85.33(214A,208A) Motor vehicle fuel and antifreeze tests and standards.** In the interest of uniformity, the tests and standards for motor vehicle fuel, oxygenate octane enhancers, raffinate natural gasoline and motor vehicle antifreeze shall be those established by the American Society for Testing and Materials (ASTM) in effect on January 1, 2000 2005, except that the standards for E-Grade denatured fuel ethanol shall be the American Petroleum Institute's (API) specification in use at the Iowa terminals; *however, the diesel fuel lubricity standard (ASTM D 975, Table 1, Lubricity) shall not be effective until October 1, 2005.* In addition, a retail dealer of motor vehicle fuel shall not sell or offer for sale in Iowa a motor vehicle fuel that contains more than ~~2~~ *one-half* of one percent of methyl tertiary butyl ether (MTBE) by volume.

This rule is intended to implement Iowa Code sections 208A.5, 208A.6 and 215.18 and 1999 Iowa Acts, chapter 204.

[Filed 3/25/05, effective 5/18/05]

[Published 4/13/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/13/05.

## ARC 4109B

COLLEGE STUDENT AID  
COMMISSION[283]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission hereby amends Chapter 21, "Approval of Postsecondary Schools," Iowa Administrative Code.

These amendments specify additional rules and modifications concerning committee governance and approval of applicant schools.

Notice of Intended Action was published in the January 5, 2005, Iowa Administrative Bulletin as **ARC 3921B**. One comment was received in support of the amendments. The adopted amendments are identical to those published under Notice.

## COLLEGE STUDENT AID COMMISSION[283](cont'd)

These amendments were adopted on March 14, 2005.

These amendments will become effective May 18, 2005.

These amendments are intended to implement Iowa Code section 17A.3(1)“a” and “b” and chapters 261 and 261B.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [21.1, 21.2] is being omitted. These amendments are identical to those published under Notice as **ARC 3921B**, IAB 1/5/05.

[Filed 3/24/05, effective 5/18/05]

[Published 4/13/05]

[For replacement pages for IAC, see IAC Supplement 4/13/05.]

**ARC 4104B****NURSING BOARD[655]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby amends Chapter 16, “Nurse Licensure Compact,” Iowa Administrative Code.

These amendments clearly stipulate that the NCLEX<sup>®</sup> examination or its predecessor examination is required for the purpose of a multistate license. The documentation necessary to prove state of residency is expanded for military personnel.

These amendments were published in the Iowa Administrative Bulletin on January 19, 2005, as **ARC 3937B**. These amendments are identical to those published under Notice.

These amendments will become effective May 18, 2005.

These amendments are intended to implement Iowa Code chapters 152 and 152E.

The following amendments are adopted.

ITEM 1. Amend rule 655—16.2(152E) by renumbering subrules **16.2(1)** to **16.2(5)** as **16.2(2)** to **16.2(6)** and adding the following **new** subrule 16.2(1):

**16.2(1)** No applicant for initial licensure will be issued a compact license granting a multistate privilege to practice unless the applicant first obtains a passing score on the applicable NCLEX<sup>®</sup> examination or its predecessor examination used for licensure.

ITEM 2. Amend renumbered subrule **16.2(2)** by adding the following **new** paragraph “d”:

d. Military Form DD 2058, State of Legal Residence Certificate, or military Form DFAS 702, Defense Finance and Accounting Service Military Leave and Earnings Statement.

[Filed 3/23/05, effective 5/18/05]

[Published 4/13/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/13/05.

**ARC 4100B****PROFESSIONAL LICENSURE  
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Mortuary Science Examiners amends Chapter 100, “Practice of Funeral Directors, Funeral Establishments, and Cremation Establishments”; rescinds Chapter 103, “Discipline for Funeral Directors,” and adopts a new Chapter 103, “Disciplinary Proceedings”; rennumbers Chapter 104, “Fees,” as Chapter 105; and adopts a new Chapter 104, “Enforcement Proceedings Against Nonlicensees,” Iowa Administrative Code.

These amendments add a statement to require written permission from an authorized person for anyone other than the funeral director, intern, immediate family member or student to be in the preparation room; delete the statement regarding the transit permit from 100.10(6)“a”; and adopt a new discipline chapter and a new chapter regarding enforcement proceedings against nonlicensees.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 16, 2005, as **ARC 3985B**. A public hearing was held on March 8, 2005, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, Des Moines, Iowa. One public comment was received. The Iowa Funeral Director's Association suggested a modification to subrule 100.10(6), paragraph “a,” to clarify the issue of transfer of responsibility. The Board modified the paragraph in response to the public comment. Paragraph “a” now reads as follows:

“a. Cremated remains may be disposed of by placing them in a grave, crypt, or niche; by scattering them in a scattering area as defined in these rules; or they may remain in the personal care and custody of the authorized person. In the event that the cremated remains are placed in a grave, crypt, niche or scattered in a scattering area, it is the responsibility of the authorized person or the authorized person's designee to forward the burial transit permit to the state or the funeral director who arranged the cremation services so the death certificate can be amended and accurately reflect the place of final disposition. After supervising the transfer of cremated remains to the authorized person or place of final disposition, the funeral director shall be discharged.”

These amendments will become effective May 18, 2005.

These amendments are intended to implement Iowa Code chapters 21, 147, 156 and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [100.6(1)“c,” 100.10(6)“a,” Chs 103 to 105] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 3985B**, IAB 2/16/05.

[Filed 3/23/05, effective 5/18/05]

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